

## 9. Marriage and divorce

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## 01. [Marriage and divorce](#) [\[Top\]](#)

Attraction towards the opposite sex is one of the natural desires that Allah has created in human body. In the childhood this impulse is very limited but as the person approaches puberty, this impulse grows stronger and stronger, and sometimes it may even touch the limit of madness. Allah has ordained his creation in such a way that each and every style of action, manner of movement and countenance of the opposite sex only adds fuel to the fire of passion. Moreover, the Creator of the universe has placed several things which stimulate and stir such hidden desires. The cool beauty of the moon, the lovely colour of rose, the enchanting fragrance of jasmine, the gentle morning breeze, the greenery of the spring season and the natural charm of the rainy season are some of the strong stimulants which excite the human passion. Humans also have not lagged behind in creating situations which enhance and strengthen this desire, not to speak of the sweet melodies and lustful poetic descriptions and depictions, meant only for this purpose.

Can you say why the Wise Originator of everything has created these phenomena which deprive a person of comfort and calmness and give him anxiety and unease in its place? It is because Allah wants to test our piety, obedience and willingness to please Allah. Another purpose is the growth and continuance of the human race. This could have been achieved as well by making the satisfaction of sexual desires a free-for-all like rain water that knows no boundary. But it would have led to overindulgence, immodesty, mutual contests and rivalries, deprivation of the human race of its origin and parentage, and end of trust and confidence in the society. The evil and waywardness it would have created in the society needs no elaboration. There have been several periods in human history when the quasi-animal humans and wicked devils who put to shame the Satan (Iblees) in their wickedness have imposed this experiment this on the society: experiments whose description bleeds human modesty. The days of Roman decline (before the blessed advent of Islaam) when prostitution was a respectable profession, and Muzdak's movement (before Islaam) which permitted sex with each and every woman, even one's mother and sister, are some of the shocking instances of this inhumanness. Unfortunately, the modern Jahiliyya (ignorance) of the West has been attempting to popularize those past follies once again with the trade name of art and culture. To Allah we raise our complaint of helplessness.

In opposition to these philosophies of overindulgence, appeared the other inordinateness of prohibiting all sexual relations, treating them as unholy and unpardonable sin. In Rome, this view got acceptance as a reaction to the campaign of excessive licentiousness, and similarly in Persia, Maani's movement spread as a counter to Muzdak. Maani encouraged monasticism and brought in such ideological fanaticism that a child would consider even the existence of his parents a sin. In fact, people started hating their own selves, treating their birth as the result of a detestable sin. This ideological extremism also brought in hatred, ruthlessness and inhuman insensitiveness; inevitably leading to the promotion of seclusion, indifference towards society, and decline in the population of human race. Also, this unnatural obstruction of the healthy human desire had adverse medical and psychological impacts on the people.

In contrast to these ideological extremes, Islaam which is the natural religion and way of life, came up with a path of moderateness and balance. In deference to the human nature, Islaam permits the satisfaction of natural sexual passions under easy-to-observe limits and bounds; and taking into consideration the requirements of civilization, it strictly prohibits any kind of extra-marital relation.

It is a fact that any person who studies the moderate and healthy idea of sexual relations in Islaam, compares them with the natural needs of an uncorrupted soul and with the ideas put forward by other religions and ideologies will be forced to bow before the greatness of Islaam. The complete conformity of Islaamic laws with human nature, their moderateness and comprehensiveness will undoubtedly make him thank Allah for this great favour of Allah upon him i.e., Islaam. He will be forced to acknowledge that *the true religion and way of life from Allah is Islaam alone* (Quran 3:19)<sup>1</sup>.

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<sup>1</sup> إِنَّ الدِّينَ عِنْدَ اللَّهِ الْإِسْلَامُ. (Quran 3:19)

## 02. Encouragement of Marriage

Islaam has not only permitted marriage but in fact supported and encouraged it. Islaam has explicitly prohibited single (unmarried) life. Calling for the attention of the unmarried persons of the Muslim society, the holy Quran says: *"And get those among you married who are single<sup>2</sup>."* (Quran 24:32) Forbidding the women from living a life of singlehood, Allah says: *do not prevent them from marrying their (former) husbands<sup>3</sup>.* (Quran 2:232) The Glorious Book while enumerating the attributes of the prophets of Allah mentions that they used to have wives and children: *We sent Messengers before you (O Muhammad [sal-Allâhu 'alayhi wa sallam]), and made for them wives and offspring<sup>4</sup>.* (Quran 13:38) The Book also praises the pious servants of Allah who raise their hands before Allah asking for wives and children who provide comfort: *Our Lord! Bestow on us from our wives and our offspring the comfort of our eyes<sup>5</sup>* (Quran 25:74)

There are numerous hadiths also which encourage and lay stress on marriage. Addressing the youth, the holy Prophet ﷺ said: *Whoever among you is capable of marrying must marry<sup>6</sup>.* When some Sahaaba (holy companions) intended to refrain from marriage, the holy Prophet expressed his dislike for it saying: *I am more fearful of Allah and more pious than any of you, yet I marry women. Whoever, transgresses my path is not among us (is not a Muslim)<sup>7</sup>.* The Prophet ﷺ called marriage his custom as also the custom of prophets before him<sup>8</sup>. Moreover, the noble Messenger also encouraged marriage at an earlier age after puberty when the person develops sexual desire, saying that this act of marriage protects the person from the Satan's trap<sup>9</sup>. Some of the holy companions sought permission for remaining unmarried so that they might utilize all their time in worship of Allah and His remembrance. But the holy Prophet ﷺ did not allow it<sup>10</sup>. The holy Prophet (peace be upon him) himself wedded several women belonging to different tribes.

## 03. Command for marriage

Keeping in view the above emphases of the Islaamic Sharia regarding marriage and also the needs and physiological states of different people, Islaamic fuqahaa' (jurists) have elaborated the degree of importance of marriage in different circumstances:

- If a person is likely to commit the sin of fornication in case he does not marry, then marriage will be *wajib* (compulsory) for him in order that he may safeguard his modesty and refrain from committing the prohibited act.
- A person has normal, healthy sexual desire which is not as strong as to make him indulge in fornication i.e., he is in control of his desires, then marriage will be *sunnat* (Prophet's custom) for him<sup>11</sup>.
- A person who is devoid of sexual desire and incapable of sexual intercourse (impotent) – whether by birth or on account of age, disease, etc. – should not marry, as he will be unable to perform the marital duties and safeguard his wife's chastity.

<sup>2</sup> وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ . (Quran 24:32)

<sup>3</sup> فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ . (Quran 2:232)

<sup>4</sup> وَلَقَدْ أَرْسَلْنَا رُسُلًا مِنْ قَبْلِكَ وَجَعَلْنَا لَهُمْ أَزْوَاجًا وَذُرِّيَّةً . (Quran 13:38)

<sup>5</sup> رَبَّنَا هَبْ لَنَا مِنْ أَزْوَاجِنَا وَذُرِّيَّاتِنَا فَرَّةً أُغْنِ . (Quran 25:74)

<sup>6</sup> يا معشر الشباب من استطاع منكم الباءة فليتزوج . (Bukhari: 4778)

<sup>7</sup> أما والله إني لأخشاكم لله وأتقاكم له، لكني أصوم وأفطر وأصلي وأرقد وأتزوج النساء فمن رغب عن سنتي فليس مني .

(Bukhari: 4776)

<sup>8</sup> خمسة من سنن المرسلين : الحياء والحلم والحجامة والتعطر والنكاح . (رواه الطبراني).

(Majma'uz Zawaaid: 7318)

<sup>9</sup> أيما شاب تزوج في حداثة سنة عج شيطانه : يا ويله يا ويله عصم مني دينه رواه أبو يعلى والطبراني

(Majma' uz Zawaaid: 7316)

<sup>10</sup> قال سعد بن أبي وقاص: رد رسول الله صلى الله عليه وسلم على عثمان بن مظعون التبتل ولو أذن له لاختصينا . (Bukhari: 4786)

<sup>11</sup> Some scholars feel nikaah is sunnat (Prophet's custom) in such a circumstance while several others are of the view that marriage is mustahabb (desirable). In fact, nikaah can not be of a lower degree than sunnat and scholars who have called it mustahabb (desirable) also imply the same. The numerosity and authenticity of the Prophet's traditions in this regard also suggest the same.

- If an old man marries a similarly old woman so that the duo may help and serve each other in old age, then it is allowed, as there is no fear that the woman may indulge in extra-marital relations.

#### 04. Methods of Marriage or Sexual Relations in the Days of Ignorance

Before Islaam, several customs going under the name of *Nikaah* were prevalent which were nothing but the worst instances of immodesty and indecency. The Mother of Believers Hazrat Aisha narrates<sup>12</sup> that there four kinds of *Nikaah* (sexual relations) in the days of ignorance. (The first one was the normal permissible *Nikaah*, while the other three were as follows: )

1. *Flag relation*: Professional prostitutes would place a flag at their doors which were symbols of their profession. Men would visit such women. Such relations were termed *flag relation*.
2. *Group relation*: Many people of a particular tribe or region would have sexual relations with the woman. The woman would not let any other man enter into sexual relationship with her. After childbirth, she would associate one of those men with the baby as his father based on similarity in look.
3. *Nobility-seeking relation*: To get a baby of noble lineage, the woman would have relation with prominent people of different tribes.

Islaam forbade all these immodest forms of *Nikaah* and saved womanhood from these insults and abuse.

#### 05. The Islaamic Method of Marriage [\[Top\]](#)

The form of marriage prescribed by Islaam is quite simple and easy with regard to expenses. In brief, the Islaamic method consists of two adult men and women accepting the marital relationship with each other in front of two witnesses. If both or one of the transactors are minor, then the minor's (minors') guardian will have to accept the *Nikaah* contract. According to *Hanafis*, if the girl is adult, it is preferable for her guardian to undertake the proposal and acceptance of *Nikaah* in the congregation. However, if the girl does it herself, it is sufficient on

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<sup>12</sup> [Taken from Bukhari (4834):] Hazrat Aaisha reports that in the days of Ignorance there were four kinds of widely prevalent sexual relations:

1. *Present-day marriage*: A man proposes to another man regarding his daughter or ward, pays the dower to the woman and marries her.
2. *Relation for other man's baby*: At the end of the wife's monthly period, her husband would ask her to invite a certain person (of high status) and have relation with her (on and off). The husband would not touch her till her pregnancy from the other man became quite clear (conspicuous). After that the husband would have relation with her whenever he liked. This was done to obtain a baby of high breeding. This was termed *relation for other man's baby*.
3. *Relation with a small group*: A small group of less than ten persons would have relations with a woman whenever they liked. When the woman got pregnant and gave birth to the baby, she would call all those men a few nights thereafter (after that). None of those men would absent himself from this important function. The woman would announce that you all are well aware of the physical relation that you all had with me. Now I have given birth to a baby, so it is Mr X's child (she would name one of those men). The man had to accept the parentage, and so the child would be his.
4. *Relation with a large group*: This was nearly same as prostitution. The prostitute would place a flag on her house or tent as a brothel signboard. Whosoever liked would visit her and have relation with her, she would not disallow anybody. When the woman gave birth to a baby, she would call all these men who had had relations with her, and an oracle would associate the baby with one of those men on the basis of similarity of the child with one of those men. The man could not excuse himself from this parentage. The child would now onwards be called that man's progeny (offspring).

When Allah sent the Holy Prophet ﷺ with the true religion, he prohibited all sorts of relations except the first one.



account of the Holy Prophet's ﷺ hadith: "A husbandless woman has more right on herself than her guardian."<sup>13</sup> On more than one occasions, the holy Quran has associated *Nikaah* with the woman herself<sup>14</sup>. The holy Prophet ﷺ himself married Hazrat Umme Salama رضي الله عنها without any guardian for her. Thus, this is what the general rules and principles of the Sharia demand. No doubt, marriage is a contract and transaction and Sharia has considered the woman as independent in all kinds of contracts and transactions.

Nevertheless, the natural bashfulness of the woman demands that while her like and consent should be the decisive factor, the responsibility of directly proposing or accepting be not laid upon her. Therefore, the sharia prefers the mediation of the guardian (walee) even on behalf of an adult girl. This is what the hadiths prescribing and stressing the need of a guardian for a woman's marriage imply. Other fuqahaa consider the presence of walee for a woman's marriage as a necessary condition for nikaah.

When this plain and simple method of Islaamic marriage is compared with the methods of marriage of other communities, we get an idea of what a blessing Islaam is.

It goes without saying that Islaam favours announcement and publicity in the matter of nikaah. Hence the presence of witnesses has been made compulsory and the command for publicizing the nikaah has been laid down. Playing of tabour<sup>15</sup> etc. has been permitted on the occasion of nikaah. Holding the marriage ceremony in the masjid has been favoured where people are accustomed to gather. The Waleema party has also been associated with nikaah so that relations, friends and other near and dear ones may get to know of the nikaah. In our times, however, lavish wedding ceremonies are performed, people come from distant places to participate in the wedding ceremony, marriage processions (baaraat) travel from one city to another, the people on the bride-side have to prepare lavish dishes, all relations and kins consider participation in a nikaah as their right: these and other such things are quite at odds with the sharia. They are undesirable and wrong. In this respect, the only thing that comes under the etiquettes of wedding is inviting some pious people on this occasion in addition to the witnesses.

## 06. Mut'ah (Marriage for a limited period)

Islaamic has not permitted any form of wedding other than this civilized method of nikaah. None of the methods of wedding other than this is free of brazenness and immodesty. Of course, in the early days, Islam had permitted another method of wedding of the days of Jahiliyya, Mut'ah wedding. Mut'ah involved marrying for one or more days on mutually agreed dower. But later on, the Prophet ﷺ prohibited this as well. In one narration of hadith, the Prophet ﷺ clearly stated that Allaah has now made Mut'ah haraam till the Day of Judgement<sup>16</sup>. Hazrat Ali رضي الله عنه too had firm conviction regarding the prohibition of Mut'ah. He also tried to convince Abdullaah bin Abbaas on this issue<sup>17</sup>. Some people have attributed the statement of Mut'ah being permitted towards Abdullaah bin Abbaas. In fact, earlier he held the view of Mut'ah being permitted in a condition of dire necessity, like the one in which even eating of pig-flesh becomes permissible for a man<sup>18</sup>. However, later he had retracted<sup>19</sup>. Thus, there is unanimity in the Umma now over the prohibition of Mut'ah. Only the Rawaafiz (Shi'as) allow this detestable method of marriage.

## 07. Halaala marriage (Marriage to make a thrice-divorced woman halaal for her previous husband)

Similar to Mut'ah nikaah is the issue of that nikaah in which a woman separated from her husband due to talaaq e mughallaza (triple divorce) is married (by another man) with the intention of making her halaal (lawful-to-wed) for her first husband. The long and the short of the matter is that in order to warn the husband and thus

<sup>13</sup> Muslim:1421

<sup>14</sup> Example: Al Baqara:230 "If he has divorced her (the third time), then she is not lawful to him thereafter until she has married another husband. ..."

رَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ

<sup>15</sup> Tabour: A small drum with one head of soft calfskin (Arabic: duff نَفْت)

<sup>16</sup> Muslim (1:451, 1406), narrated by Sabra bin Ma'bad Al Juhani.

<sup>17</sup> Majma'uz Zawaaid 4/265، باب نكاح المتعة

<sup>18</sup> The above reference. حواله سابق، بحواله طبراني عن سعيد بن جبیر

<sup>19</sup> Most of the hadith commentators have mentioned this.

minimize the occurrence of triple divorces, the Islamic sharia (law) has made the woman completely forbidden for marriage to the first husband after she has been divorced thrice by him. Now the woman can become lawful for marriage to the first husband in only one way, i.e. the woman be wedded to another woman and the new couple share the pleasure of sexual intercourse. Now she becomes lawful for the first husband as this is apparently an intense blow on the sense of honour of an honour-conscious husband.

Now some people have discovered a trick for making the thrice-divorced woman lawful-to-wed for the divorcer. They get the thrice-divorced woman married to a man for a few days. He divorces the woman after consummating the marriage so that she may become lawful for the first husband, the divorcer. The second husband is well-aware at the time of marriage that he is doing this nikaah only for fulfilling a temporary need and that he has no sincere intention of spending a permanent marital life with her. This form of nikaah is exactly similar to Mut'ah. The only difference is that in Mut'ah, the transactors expressly declare the nikaah to be temporary at the time of wedding ceremony itself (nikaah transaction), whereas in this form of marriage (halaala marriage) the temporary nature of the marriage is in their heart, not expressly spoken by the tongue. Therefore, the Prophet of Allaah ﷺ has expressed his strong displeasure over this form of nikaah in a way that is enough to make a believer tremble and be restless<sup>20</sup>. However, if a man does this act (marriage to make the woman halaal for her first husband), will the marriage be valid? The fuqahaa are divided in opinion regarding this.

The majority of the fuqahaa say that the halaala marriage will be valid and with the consummation of this marriage, the woman will become halaal for her first husband<sup>21</sup>. However, the Hanbali fuqahaa and Qaazi Abu Yusuf among Ahnaaf call such a nikaah to be insufficient for making the woman halaal for her first husband.<sup>22</sup> The correct view is the first one. Though such a man (the husband in halaala nikaah) is a grievous sinner and wrongdoer in Allaah's sight and though this act of (halaala nikaah) is highly condemnable and abhorrent, yet it is sufficient for making the woman lawful for marriage to her first man. Even in the above hadith, the second husband has been called مُحَلِّل (muhallil, i.e. the man who makes the woman halaal) and the first f (muhallal lahu, i.e. the man for whom the woman has been made halaal). Moreover, there are several instances in Islaamic law where an act may be condemnable in its essence, yet the results that are caused by it nevertheless take place.

## 08. Purposes of marriage

Now it will be useful to cast an eye on those goals for which Islaam has not only permitted marriage, but in fact placed it in the list of worships which holds a higher place than (worldly) transactions, and due to which in the eyes of a large section of the Muslim community, family-life is preferable over that unmarried life which is occupied with nafl (desirable, not mandatory) worships. The reason is that rules are mostly dependent upon goals and purposes, without understanding which we can understand neither the system of life related to that field nor the details of rules associated with that sphere of life.

In the eyes of Islaam, the basic purpose of marriage is reproduction as the Qur'aan has called the woman tilth (farmland) for the man: فَأْتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ "... approach your tilth when or how ye will ..." (Qur'aan 2:223). The Prophet ﷺ while encouraging marriage called it the cause of increase in the population of the Umma (Muslim community): تَنَاقَحُوا تَنَاسَلُوا "Marry and produce children."<sup>23</sup> Some traditions especially express the Prophet's ﷺ direction to marry women who are, by nature, more capable of procreating: تَزَوَّجُوا الْوَدودَ الْوَلُودَ "Marry women who are loving and produce more children."<sup>24</sup> Quran has made the pious and devout

<sup>20</sup> Abu Daawood 1/284 [(باب التحليل) أبو داود،] : Allaah's curse be upon the man who does halaala nikaah and the man for whom this is done, i.e. the first husband!

<sup>21</sup> See Sharh Muhazzab 16/249, Hidaaya vol2.

<sup>22</sup> Al Mughnee 7/138

<sup>23</sup> Bukhari vol2.

<sup>24</sup> Mishkaat 2/267

people pray for both wife and children together: هَبْ لَنَا مِنْ أَزْوَاجِنَا وَذُرِّيَّاتِنَا قُرَّةَ أَعْيُنٍ “Grant unto us wives and offspring who will be the comfort of our eyes.” (Qur’aan 25:74) all these things clearly demonstrate the Islamic principle that the basic, fundamental and principal purpose of marriage is the growth of human species (in number).

The second important purpose of marriage is preservation of chastity and honour and fulfilment of the psychological desire of a person in a natural way. This is the reason why the Prophet ﷺ has referred to marriage as a part of marriage. He said that marriage protects a person from evil gazes (looking at stranger women) and from loss of chastity: فَأَبْهُ أَغْضُ لِلْبَصَرِ وَأَحْصُنُ لِلْفَرْجِ “It has a great role in lowering the gaze and safeguarding the chastity of the genitalia.”<sup>25</sup> The Quran has termed the married men and women as مُحْصِنٍ muhsin and مُحْصِنَةٍ muhsina respectively, which means: being fortified, implying that by marrying a person secures himself in a fort of chastity and honour and Shaitaan cannot overpower him.

[The third purpose is peace of mind.] It is a part of human psyche that he finds peace and solace in another human being. When he is born, the mother’s affection, the father’s care and the siblings’ love act as the comfort of heart. As he grows, his emotional and sentimental attachment with these relations begins decreasing. The wife makes up for this (vacuum in life). If he is good and pious, she becomes the source for coolness of heart and comfort of mind. As he grows further in age, the love for children overshadows his love for wife. Nevertheless, it is the wife who remains the real provider of peace, partner in happiness and grief, balm for heart-wounds, and the secret-sharer of public and private life till his death. Therefore, the Qur’aan says: لَتَسْكُنُوا إِلَيْهَا “that you may live in tranquillity with them” (30:21) and uses the excellent term of libaas to express their mutual relation, stating that the two of you are garments for each other: هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ هُنَّ “They (wives) are your garments and you are their garments.” (2:187) Clearly, nothing is more secret-knowing, aware of the virtues and defects about the human body and protective of health from the hardships of seasons, than the garments.

A careful thought reveals that all the rules regarding marriage revolve around these three purposes only. The need for idda (waiting period for a woman who has lost her husband), all the rules related to the proof of lineage and all regulations regarding sexual relations are only to ensure the fulfillment of the requirement of species growth and to preserve the identity of human race.

The rules like permission to see the fiancée (bride-to-be) before marriage, prohibition of zinaa (both adultery and fornication), encouragement of sexual relation with wife, direction for considering the desires and inclination of each other, permission of one to four wives for men, etc are intended to preserve chastity and honour of the human race.

The due regards paid to the likes of the boy and the girl while contracting their marriage, the consideration of equality between them in important aspects, directions for living with the spouse amiably, command against divorcing, permission of divorce and khula’ (breaking of marital relation by wife) only when hatred has left no place for mutual love and peace, right of the wife to demand separation (at the Islamic court) in case of some particular diseases and disabilities (of the husband), and many other rules of this type are there to maintain the atmosphere of mutual love and peace between the spouses, and help to strengthen it.

Some religions of the world have made marriage such an unbreakable relation that its hollow walls have to be maintained even if they stand over the foundation of hatred. On the other hand, the modern culture of the debased West considers marriage only a method for fulfilling sexual desires without any intention of procreation, or establishing a world of permanent love and peace, or maintaining chastity and honour through this relation. If we analyze these ancient and modern temples of Jaahiliyya, observe them after peeling off the artificial polish of culture and civilization from their faces and compare them with the natural, moderate and balanced teaching of Islaam, we come to the clear conclusion that Islam is the only way of life that has based the rules of marriage on

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<sup>25</sup> The former reference.



fair principles, in pursuit of high goals. Thus Islaam has saved its cloth-edge from extremism of both kinds (too much and too less) in every aspect.

## 09. Seeing the fiancée

The Islaamic sharia wants marriage to be a durable relation. So it shuts all doors of instability in the beginning itself. It allows the man to see his bride-to-be. In fact, the Prophet ﷺ encouraged it, saying that the woman to whom proposal of marriage is placed should be first seen.

إذا خطب أحدكم المرأة، فإن استطاع أن ينظر إلى ما يدعوه إلى نكاحها فليفعل.

*When one of you sends the marriage proposal to a lady, then if he is able to see that which has invited him to marrying her, he should see it.*<sup>26</sup>

It is not necessary for the groom-to-be to take prior permission from the girl and her guardians. It is sufficient if he sees her in an unnoticeable way. The above quoted report of Hazrat Jaabir itself mentions that he had proposed to a woman and saw her from a hiding-place<sup>27</sup>. The groom-to-be can also see her by permission. Hazrat Umar رضي الله عنه had seen Umme Kulsoom bint Ali with his permission only. Nevertheless, it appears that it would be more suitable to see her unnoticeably (without letting her know) as rejecting a relation proposal after seeing the girl may have an adverse impact on her psyche. Instead of seeing the fiancée himself, if the fiancé gets other women of his family to see her and relies on their information, that too would be enough. However, as already mentioned, the boy may see the fiancée himself. In India, people consider this indecent which is incorrect.

Only the face, hands and general appearance and stature of her well-covered body can be seen by the groom-to-be<sup>28</sup>. If the women are seeing, then in accordance with the general rules and regulations of the sharia, they may see the parts of the fiancée's body other than that between the navel and the knees, as and if need be<sup>29</sup>. However, it is essential for the boy to see only with the intention of marrying, not with the intention of evil-gazing (seeing a stranger of the opposite sex to satisfy one's lust). If the fiancé is seeing with the intention of marrying her, then it is permissible for him to see even if he fears getting sexually excited at the time<sup>30</sup>, as it is a necessity admissible in the sharia. The licentiousness of the Western culture has spread this slogan also that before marriage, the couple should spend some time together and maintain relations of mutual love and affection. But Islaam considers this act of perversion as prohibited and a big sin. Islaam's view-point is that it is not permissible for an unrelated pair of man and woman to even meet in loneliness<sup>31</sup>. The reason being that such an act is clearly a cruelty to the woman and violation of her honour. If this experiment of living together leads to the experiment of sexual relation and if the marriage does not come to fruition, then the woman alone will have to bear the burden of the result of this sexual relation.

## 10. Proposal upon proposal

[Mahr (translated as dower here): obligatory bridal-money given by the husband to his wife at the time of marriage.]

With regard to the marriage proposal, the Prophet ﷺ has also directed that one should not propose to a woman if another man has already proposed to her<sup>32</sup>. لا يخطب بعضهم على خطبة أخيه. None of you should make a proposal over his brother's (any Muslim) proposal.), as this leads to competition, jealousy and acrimony. This applies to the situation when the bride's people have shown interest in the former proposal. If they reject the proposal or if they show no inclination or interest in the proposal, then another person can propose to the girl. Though the proposal of marriage can be made either by the boy or the girl, it would be better if the boy initiates it. To most of the Sacred Wives, the Prophet ﷺ himself had made this proposal. The practice of the Sahaaba was also according to this, though there are a negligible few instances of the opposite. The girl making

<sup>26</sup> Abu Dawood 2/284, reported by Jaabir bin Abdullah. باب الرجل ينظر إلى المرأة وهو يريد تزويجها.

<sup>27</sup> The above reference.

<sup>28</sup> Margin notes of Abu Dawood 2/284, published from Delhi.

<sup>29</sup> Raddul Muhtaar 5/237. باب الحظر والإباحة.

<sup>30</sup> Al Mughnee 7/74

<sup>31</sup> Mishkaatul Masaabeeh: Kitaabun Nikaah.

<sup>32</sup> Bukhari 2/773: Kitaabun Nikaah.

a marriage proposal apparently seems to violate her natural bashfulness whereas search for a wife by the man is completely in accordance with his supervisory role and relative superiority in the conjugal life.

## 11. Criterion for accepting a proposal

What criterion should boys, girls and their guardians take into consideration while selecting a marriage-proposal? The Prophet ﷺ has shed light on this aspect also. The holy Prophet ﷺ said that if you get the proposal from a person whose religious life and moral conduct satisfies you (من ترضون دينه وخلقه), then accept it, or else there will spread evil and mischief<sup>33</sup>. According to another hadith, women are usually married for four reasons: wealth, family-status and lineage, beauty, and piety. Make your conjugal life accomplished by marrying the pious (thus preferring the criterion of piety over others)<sup>34</sup>.

Thus, it is permissible to make beauty or any other desirable attribute according to man's natural inclination – which the holy Qur'aan suggests with the words of “marry women of your choice (4:3)” (فَانكِحُوا مَا) – (طَابَ لَكُم مِّنَ النِّسَاءِ) – the criterion for selecting a relation. Nevertheless, the preferable way is to make the religious and moral life of the boy and the girl the criterion for marriage. Allaama Kaasaani says:

وعندنا الأفضل اعتبار الدين والاقتصاد عليه.

According to us, the desirable way is to make the religious life the criterion, and limit (the selection criteria) to it alone<sup>35</sup>.

## 12. Equality

In some narrations reported from the holy Prophet ﷺ, there is a direction for taking equality of status into consideration while deciding about a marriage proposal. In general, the hadiths which are mentioned in this regard are weak and unreliable. However, the fuqahaa have mentioned equality in nine respects, in totl, to be considered:

- |  |                                |
|--|--------------------------------|
| (1) parental lineage   | (2) being free or slave        |
| (3) being a Muslim from several generations or being a new convert |                                |
| (4) religiousness and piety  | (5) wealth and economic status |
| (6) family status  | (7) occupation and profession  |
| (8) being free of physical defects                                 | (9) intellect and wisdom       |

However, in reality, **the actual basis to be considered is religiosity and moral character only.**

Paying much importance to lineage and family status violates the noble Islaamic principle of equality and brotherhood. The Prophet ﷺ said: Allah has ended the distinctions of the Days of Ignorance and pride over ancestors. A human is now either a pious believer or a wretched sinner<sup>36</sup>. The Prophet ﷺ and his noble companions have given the example with their own acts. The Prophet ﷺ married his cousin Zainab with his freed slave, Zaid bin Haarithaa<sup>37</sup> رضي الله عنهما and the same Zaid's son with Faatima bint Qais who belonged to the noble Quraish tribe<sup>38</sup>. He got Zabbaa'a bint Zuhair bin Abdul Muttalib married to Miqdaad bin Aswad. The Prophet also said that I have done the marriage of Miqdaad and Zaid in such a way so that good conduct may become the criterion for social status: لِيَكُونَ أَشْرَفُكُمْ عِنْدَ اللَّهِ أَحْسَنُكُمْ خُلُقًا (... so that the person with the best conduct among you be (considered) the most honorable near Allaah<sup>39</sup>). Such instances are quite frequent in the Prophet and his companions' lives. Thus, as has been mentioned above, way of living, religious condition, piety and conduct are the only things that are to be taken into consideration while selecting a marriage relation; though keeping in view the human nature, people have been permitted to take family background, profession, economic status and oldness or newness in Islaam into consideration as well.

<sup>33</sup> Tirmizi 1/207: Kitabun Nikaah.

<sup>34</sup> Tirmizi 1/207: Narrated by Abu Huraira باب ما جاء في من ترضون دينه

<sup>35</sup> Badaaus Sanaai' 2/317

<sup>36</sup> Abu Daawood باب التفاخر بالأنساب

<sup>37</sup> Baihaqee 7/134

<sup>38</sup> Bukhaari and Muslim.

<sup>39</sup> Baihaqee 7/135

### 13. Marriage Khutba (speech)

Marriage khutbas were delivered even before Islaam, in the days of Ignorance, but they used to consist of expressions of superbia, ancestral pride and exaggerated praise of their forefathers. As Islaam holds nothing to be a basis for pride other than piety, and as it demands from man humility, modesty and effacement in every act of life, and instructs him to praise and glorify God and entreat and beseech Him; so although it let the marriage speech continue, it completely transformed its subjects and details. In its place, Islaam prescribed a khutba that comprises praise and glorification of Allaah, admission and acknowledgement of monotheism and prophethood, those verses of Qur'aan whose subject is drawing man's attention towards the matters of life and guide him therein. Therefore, the khutba reported by Hazrat Abdullaah bin Mas'ood and Abu Moosaa Ash'aree رضي الله عنهما is the following:

الْحَمْدُ لِلَّهِ. نَحْمَدُهُ وَنَسْتَعِينُهُ، وَنَعُوذُ بِاللَّهِ مِنْ شُرُورِ أَنْفُسِنَا وَمِنْ سَيِّئَاتِ أَعْمَالِنَا. مَنْ يَهْدِهِ اللَّهُ فَلَا مُضِلَّ لَهُ، وَمَنْ يُضِلَّهُ فَلَا هَادِيَ لَهُ، وَأَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ.  
اتَّقُوا اللَّهَ حَقَّ تَقَاتِهِ وَلَا تَمُوتُنَّ إِلَّا وَأَنْتُمْ مُسْلِمُونَ.  
اتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا.  
اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا. يُصْلِحْ لَكُمْ أَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ فَقَدْ فَازَ فَوْزًا عَظِيمًا.

“All praise belongs to Allaah. We glorify Him and seek His help. We seek Allaah's protection from the evils of our spirits (nafs) and our sinful acts. Whom Allaah guides, none can mislead and whom He leaves astray, none can guide. I testify that there is no god but Allaah, the One, Who has no partner, and that Muhammad صلى الله عليه وسلم is His servant and prophet.

Fear Allah as He should be feared, and die not except in a state of Islam.

Reverence Allah, through whom you demand your mutual (rights), and (reverence) the wombs (that gave birth to you): for Allah ever watches over you.

Fear Allah, and (always) say a word directed to the Right: that He may make your conduct whole and sound and forgive you your sins. He that obeys Allah and His Messenger, has already attained the highest achievement.”<sup>40</sup>

Generally, this speech has been referred to as Khutbatul Haaja (Speech of necessity) or Tashahhudul Haaja (Testimony of Haaja) in hadiths. This implies that this speech (formula) can be recited at the time of any necessity. But a report in Baihaqi clearly mentions nikaah: ... إذا أراد أحدكم أن يخطب لحاجة من النكاح أو غيره (When anyone of you wants to say speech on the occasion of wedding or some other thing, (then recite this formula).)<sup>41</sup> This indicates that this formula should be recited particularly on the occasion of a wedding ceremony. It has been the custom of our preceding greats to recite some hadiths and words of prayer after the above mentioned verses for propitiousness.

### 14. Etiquettes and desirable acts

Among the desirable acts and etiquettes of marriage is the public announcement of it. The Holy Prophet صلى الله عليه وسلم said: أعلنوا هذا النكاح (Make the marriage public). Another Prophetic custom is to do the ceremony in a mosque. The Holy Prophet صلى الله عليه وسلم said: واجعلوه في المساجد (Do it in mosques).<sup>42</sup> Although no point of time is inauspicious in Islaam, but as the Prophet's صلى الله عليه وسلم wedding to Hazrat 'Aaisha رضي الله عنها and her first meeting with groom both took place in the month of Shawwaal, some scholars say that marriage in Shawwaal is desirable<sup>43</sup>. In some regions, people consider the months of Muharram, Safar and Zul Qa'da inauspicious and unsuitable for marriage. This is totally against Islaamic teachings and runs contrary to Islaamic concepts. Scholars have also written that the desirable and preferable day for marriage is Friday<sup>44</sup>.

<sup>40</sup> Majma'uz Zawaa'id 4/288.

<sup>41</sup> Nailul Awtar 6/39.

<sup>42</sup> Tirmidhi 1/138. Imaam Tirmidhi said: هذا حديث حسن غريب (This hadith is good and rare).

<sup>43</sup> Ihyau 'Uloomid Deen 2/36.

<sup>44</sup> Fathul Qadeer 3/102

## 15. Throwing up dates

Throwing up dates and sugar-candies in marriage assembly for people to collect is common in our regions. Without doubt, the throwing up of dates among the people present and their collecting them, by themselves, are permissible and allowable, and it won't be called "eating the prohibited". But as this may lead to shoving and even fisticuffs, so Imaam Maalik, Imaam Shaafi'ee and according to one report, Imaam Ahmad forbid this. According to Imaam Abu Haneefa and some other scholars, there is no undesirability in this. A report from Imaam Ahmad also concurs with this.

The scholars who call this permissible base their view on the fact that the Prophet ﷺ slaughtered five or six she-camels and announced that whoever likes may cut off a piece from the she-camel من شاء اقتطع. This permission and permission of collecting from thrown up objects apparently belong to the same class<sup>45</sup>. Some scholars have presented the case of a Helper's (Ansaari's) marriage for the permissibility of throwing up of dates, in which the Prophet ﷺ himself had thrown up dry fruits. But actually, presenting this tradition to support this is not just, because the chain of narrators for this tradition includes Bishr bin Ibraahim about whom scholars of Hadith say that he used to fabricate hadiths<sup>46</sup>.

Nevertheless, whatever has been mentioned above is enough to prove the permissibility of throwing up of dates. Moreover, it's a common experience that in such ceremonies, the situation of jostling, shoving and melee does not arise. Only the expression of delight is intended with this. Fataawa `Aalamgiri also quotes the permissibility of throwing up of sweets, dirhams (coins), etc. on such an occasion<sup>47</sup>. Of course, if it is feared at some place that this may lead to unmannerliness and indecorum in the assembly, then distributing would be preferable.

## 16. Complimenting the couple

How to say the words of compliment after the marriage is also established from the Prophet ﷺ. Hazrat Abu Huraira narrates that the Prophet ﷺ used to compliment after the marriage in these words: بَارَكَ اللَّهُ وَبَارَكَ عَلَيْكَ، وَجَمَعَ بَيْنَكُمَا فِي خَيْرٍ (May Allaah grant propitiousness! May he bestow you with auspiciousness and gather both of you in well-being!)<sup>48</sup> The tradition reported from the Prophet ﷺ by Hazrat `Aqeel bin Abu Taalib has these words: بَارَكَ اللَّهُ فِيكَ وَبَارَكَ لَكَ فِيهَا (May Allaah grant propitiousness upon you and may He make her auspicious for you.)<sup>49</sup>

## 17. Duff (tabor)

As publicity and announcement are aimed at in marriages, the Prophet ﷺ has permitted the playing of tabors (a small drum with one head of soft calfskin). The Prophet ﷺ said: واضربوا عليه (Play tabors on this occasion.)<sup>50</sup> In fact, he did not prohibit the playing of tabors by children (girls) on occasion of `Id also<sup>51</sup>. Though in later days, in view of the situation of the times, the opinions of scholars regarding the permissibility or impermissibility of tabors, became varied<sup>52</sup>. However, most of the jurists are inclined towards its permissibility. This has been quoted from Imaam Abu Yusuf<sup>53</sup>, and Hanbalis and others also hold similar view<sup>54</sup>. But it must be born in mind the evil customs of singing, playing music, playing flutes, clapping, playing tablas, singing of women in the assembly, etc. that have become prevalent in our regions are completely

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<sup>45</sup> Al Mughnee 7/219

<sup>46</sup> Majma`uz Zawaa'id 4/290

<sup>47</sup> Fataawa `Aalamgiri 5/345

<sup>48</sup> Tirmidhi 2/138

<sup>49</sup> Nailul Awtaar 6/40

<sup>50</sup> Tirmidhi 1/138

<sup>51</sup> Bukhaari and Muslim, narrated by Hazrat `Aaisha.

<sup>52</sup> Al Bahrur Raaiq 2/429

<sup>53</sup> Fataawaa `Aalamgiri 5/352

<sup>54</sup> Al Mughni 7/218

impermissible and prohibited. And to shut the doors for these anti-shari`a customs in our times, it is necessary to declare tabor also as prohibited.

## 18. Seeing off the bride

Adorning of the bride by women after the marriage ceremony (marriage khutba, proposal and acceptance) and then taking her to the groom's house or sending her (called zifaaf) is permissible. This finds mention in one of Hazrat `Aaisha's reports<sup>55</sup>. The Islaamic jurists have also termed it permissible provided no religious impropriety is carried out<sup>56</sup>. But as the assembly of women which involves veilllessness and anti-shari`a acts is not free of religious impropriety, hence it will not be permissible.

## 19. Waleema (Post-consummation feast)

[consummation = The completion of marriage by sexual intercourse]

As marriage is permissible and allowable method for fulfilling human desire, the shari`a has encouraged maximum publicity and announcement for it. One of the methods for this publicity is waleema (post-consummation party) in which the conjugal relationship between man and woman is declared through a general feast. The Prophet ﷺ has himself given banquets and also encouraged his Companions (Sahaaba) to give the waleema. When Hazrat `Abdur Rahmaan bin `Auf رضي الله عنه was married, he ﷺ directed him to give waleema, saying: *أولم ولو بشاة* (Give waleema, even if with only one goat.)<sup>57</sup> Thus waleema is among the particular customs of Allaah's Prophet ﷺ.<sup>58</sup>

What types of dishes should be cooked in a post-consummation feast: this depends on the financial condition of feast-giver. So, while the Prophet ﷺ slaughtered a goat on the occasion of his marriage with Hazrat Zainab bint Jahsh<sup>59</sup>, he gave the waleemas for some of his holy spouses with a small quantity of barley *بمُدَّين من شعير* (equivalent to 1.6 kg)<sup>60</sup>. This clearly indicates that the type of feast corresponds to a person's financial condition. Too much lavishness in waleema and spending more than one's economic status is not desirable in shari`a.

Waleema should take place after conjugal (sexual) relationship is established. In one report, it is clearly mentioned that when the Prophet ﷺ had had night relationship with Hazrat Zainab عنها رضي الله, he invited the people and they partook of the feast<sup>61</sup>. Great emphasis has been laid on accepting waleema invitation in traditions. Ibn `Umar narrates that when a person is invited to waleema, he must come for it<sup>62</sup>. In some reports, the non-acceptance of waleema invitation has been termed disobedience (of Allaah) and sin<sup>63</sup>. `Allaama Ibn `Abdul Barr quotes Imaam Maalik, Abu Haneefa, Shaafi`ee etc to be holding the view that accepting waleema invitation is compulsory, provided that a person is invited in particular<sup>64</sup>. But the correct view is that the acceptance of the invitation to this feast is also tradition (masnoon): *وقالت العامة: هي السنة* (The majority says: this is tradition)<sup>65</sup>. However, there is much emphasis and importance laid to this in shari`a. If a non-Muslim invites for such an occasion, then attending it is permissible. If acts which are non-permissible in the view of the shari`a are being done in a waleema, then one should not attend it. In this respect, the principles for general feasts hold in the case of waleema too<sup>66</sup> and they have been mentioned before.

<sup>55</sup> Bukhaari 2/775 (No: 3681, 4861, 58:234)

<sup>56</sup> Durr e Mukhtaar

<sup>57</sup> Bukhaari 2/777

<sup>58</sup> Al Mughni 7/212

<sup>59</sup> Bukhaari 2/777

<sup>60</sup> Bukhaari 2/777

<sup>61</sup> Bukhaari 2/776

<sup>62</sup> Bukhaari: reported by Ibn `Umar.

<sup>63</sup> Muslim /462 باب زواج زينب بنت جحش ونزول الحجاب وإثبات الوليمة

<sup>64</sup> Al Mughnee 7/213

<sup>65</sup> Fataawaa `Aalamgiri 5/343

<sup>66</sup> Durr e Mukhtaar: باب الحظر والإباحة



The Prophet ﷺ has called waleema on the first day after consummation “rightful” (haqq), on the second day “correct” and on the third day ostentation (show-off)<sup>67</sup>. Hence, organizing waleema for continuously two or three days or more is undesirable and avoidable. But if flaunting of wealth is not the intention, the people to be invited are many and each person attends waleema on only one day (other people attend the waleema on the second and third day), then organizing waleema for two or more days is also permissible. According to Hazrat Anas’ report, the Prophet ﷺ organized waleema for three days on the occasion of his marriage with Hazrat Safiyya<sup>68</sup>. Hazrat Hafsa bint Seereen reports that her father organized waleema for her for seven consecutive days and invited different Sahaaba (Prophet’s companions) on different days<sup>69</sup>. Our fuqahaa (Hanafi jurists) advise waleema on the day after or the second day after coming together of the couple and say that waleema will not be valid after that.

## 20. Mahr (dower)

[Mahr: obligatory bridal-money given (or promised to be given) by the husband to his wife at the time of marriage.]

To demonstrate the honour of human modesty through marriage (in the unlawful sex with mutual consent, one is deprived of honour), the shari`a has given an economic right to the wife over the husband which is called mahr (dower). (The transaction of money in the form of dower makes it a solemn affair which cannot be made and revoked at will.) In hadiths, this has been referred to as “sadaaq” on some occasions and with some other names also. Allaah says that women should be given their dowers with a good heart وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً (4:4). In fact, because of this mahr only, the woman’s chastity becomes permissible for the man (man is allowed to have sexual relation with her) by way of the special contract of marriage: وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ (All others are lawful, provided you seek (them in marriage) with mahr – 4:24) While the natural qualities and special attributes of man is a reason for the relative superiority of the husband over the wife in marital relation, the fact that mahr and other financial responsibilities have been laid upon the shoulders of the husband also plays a part: الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ (Men are the protectors and maintainers of women, because Allâh has made one of them to excel the other, and because they spend (to support them) from their means – 4:34).

## 21. Amount of Mahr

[Mahr: obligatory bridal-money given (or promised to be given) by the husband to his wife at the time of marriage.]

As for the maximum limit, Qur’aan itself has expressed clearly that there is no upper bound for it (4:20)<sup>70</sup>. It is established regarding Hazrat Hasan bin `Ali that when he married a lady, he sent to her 100 female slaves and 1000 dirham along with each female slave<sup>71</sup>. Regarding the lower limit, the Islaamic jurists vary in opinion. Some say that there is no lower limit too<sup>72</sup> while some others feel that the minimum amount of mahr is ¼ dinar<sup>73</sup> (1 dinar=about 4 ½ maasha gold<sup>74</sup>). According to Imaam Abu Haneefa, the minimum amount of mahr is 10 dirhams<sup>75</sup> (10 dirham=2 tola 7 ½ maasha silver<sup>76</sup>). All these jurists have proper arguments in favour of their

<sup>67</sup> Abu Daawood 2/170

<sup>68</sup> Fathul Baari 9/210

<sup>69</sup> Same as above.

<sup>70</sup> وَأَتَيْتُمْ إِحْدَاهُنَّ قِطَارًا ... if ye had given one of the wives a whole treasure for dower. (Qur’aan 4:20).

<sup>71</sup> Majma`uz Zawaaaid by Nooruddin `Ali bin Abu Bakr Al Haithami 4/284 (Al Maktabatush Shaamila: 4:522,7503). Chapter of Mahr, narrated on the authority of Tabaraani, reported by Ibn Sireen. The chain of its narrators includes authentic people.

<sup>72</sup> Al Mughnee 7/161

<sup>73</sup> Tirmidhi 1/211 باب ما جاء في مهر النساء .

<sup>74</sup> 1 maasha=1.037 gram. [According to Al Fiqhul Muyassar, ¼ dinar=1.0625 gram, which amounts to Rs. 1652 as on 07 Oct 09.]

<sup>75</sup> Badaai`us Sanaai` 2/275

<sup>76</sup> [10 dirham=2 tola 7 ½ maasha=32.66 gram. According to Al Fiqhul Muyassar, 10 dirham=2.975 gram which amounts to Rs. 797 as on 07 Oct 09.]

views. The Hanafees base their opinion on the tradition which says that mahr should not be less than 10 dirhams: لا مهر أقل من عشرة دراهم<sup>77</sup>.

There must be moderation in determining the mahr. It should neither be too low that the mahr loses importance, nor should it be too high that it becomes difficult for the man to pay, being beyond the financial state of the husband. Hazrat `Umar رضي الله عنه has expressed strong dislike for too high mahr saying that if high mahr could be the reason for pride and high status, then the mahr of the holy wives of the Prophet صلى الله عليه وسلم would have been higher<sup>78</sup> (as they hold the highest status among all Muslim women till the Last Day). In general, the mahr of the holy wives was 500 dirham<sup>79</sup> and that of the Prophet's daughter Hazrat Faatima was 480 dirham<sup>80</sup>. According to the present-day tola of 10 gram, 500 dirham is equivalent to 1530.900 gram of silver [=Rs. 41028 on 07 Oct 09]. Obviously, keeping the mahr in this quantity is preferable. In the times of the Prophet صلى الله عليه وسلم, the mahr of the holy wives and the Prophet's daughters used to be determined in terms of gold and silver. Thus, determining the mahr in terms of gold or silver, instead of rupees and paise or some other thing, is closer to the Prophetic tradition and also just to the woman, as [mahr is usually paid many years later and] the value of currency goes on decreasing day by day. Thus the mahr that has been determined in terms of currency loses much of its value after a period.

## 22. Rules related to Mahr

[Mahr: obligatory bridal-money given (or promised to be given) by the husband to his wife at the time of marriage.]

If mahr is not determined at the time of marriage ceremony, the marriage is valid even then as is clear from the Qur'aanic text itself (4:4)<sup>81</sup>. But the desirable way is to determine the mahr at the time of marriage contract itself<sup>82</sup>. The rules pertaining to different kinds of women are the following:

1. If mahr has been specified at the time of marriage contract, and the man has had seclusion (generally, equivalent to sexual intercourse) with the woman, then it will be compulsory for the man to pay the full specified mahr<sup>83</sup>.
2. If the mahr has been specified at the time of marriage contract but the couple separated before seclusion, then it will be compulsory for the man to pay half of the specified mahr<sup>84</sup>.
3. If the mahr was not specified at the time of marriage contract, but the couple have had seclusion, then the prevalent mahr will be compulsorily due upon the husband. Hazrat `Abdullaah bin Mas`ood gave such a verdict in favour of a woman and Hazrat Ma`qil bin Sinaan endorsed this saying that the Prophet صلى الله عليه وسلم also had given a similar verdict for Birwa` bint Waashiq رضي الله عنهم<sup>85</sup>. The prevalent mahr means the general mahr of those women in the wife's family and relations who are similar to her in age, wealth, beauty, intellect, conduct and virginity<sup>86</sup>.

<sup>77</sup> Ad Diraaya fi Takhreeji Ahaadithil Hidaaya 2/344

<sup>78</sup> Majma`uz Zawaa'id 4/283. Chapter of Mahr. [Al Maktabatush Shaamila 4:521, 7502]

<sup>79</sup> Mishkaat 2/277. [According to Al Fiqhul Muyassar, 500 dirham=1487.5 gram =Rs. 39865 as on 07 Oct 09.]

<sup>80</sup> Majma`uz Zawaa'id 4/283. [According to Al Fiqhul Muyassar, 480 dirham=1428 gram =Rs. 38270 as on 07 Oct 09.]

<sup>81</sup> وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا. (And give to the women (whom you marry) their Mahr with a good heart; but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allāh has made it lawful) – 4:4)

<sup>82</sup> Al Mughnee 7/160 (Chapter on Mahr).

<sup>83</sup> Qur'aan 4:20-21

وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بُهْتَانًا وَإِثْمًا مُبِينًا {20} وَكَيفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا {21}

4:20 But if you intend to replace a wife by another and you have given one of them a Qintaar (of gold, i.e. a great amount as Mahr), take not the least bit of it back; would you take it wrongfully without a right and (with) a manifest sin?

4:21 And how could you take it (back) while you have gone in to each other, and they have taken from you a firm and strong covenant?

<sup>84</sup> Qur'aan 2:237 وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ (If you divorce them (the women) before you have touched (had a sexual relation with) them, and you have appointed to them the Mahr, pay half of that (Mahr),)

<sup>85</sup> Abu Daawood [Al Maktaba Ash Shaamila: Abu Daawood 1:643=214, Nasai 6:121=3355].

<sup>86</sup> Hidaaya 2/333

4. If neither was the mahr specified nor did the couple have seclusion and divorce took place, then Mut'ah will be compulsory upon the husband<sup>87</sup>. The amount of Mut'ah is not definite. It depends on the financial status of the husband and affordability: عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ (The rich (should give) according to his means, and the poor according to his means – 2:236).

As for the minimum amount of Mut'ah, varied opinions have been quoted from out preceding great men and all these views are based upon deduction and inference. Ibn `Umar said that at least thirty dirham or any commodity of this value should be given. `Abdullaah bin `Abbaas held the view that normally a slave should be given; if the man wants to give less, then a garment should be given; if he wants to give still less, then at some expense (some money for daily expense) should be given. Hasan Basari and Imaam Maalik also hold this view. Hazrat Hasan رضي الله عنه had given his wife 20 ziqaaq<sup>88</sup> (or bags) of honey as Mut'ah. Qaazi Shuraih had given his divorced wife 500 dirham as Mut'ah. Imaam Abu Haneefa's teacher Hamaad held the view that the divorced woman should given half of the mahr prevalent in the woman's family and relations<sup>89</sup>. However, the famous view among Hanafees is that the minimum quantity of Mut'ah is one pair of garments<sup>90</sup>. There is no maximum limit for Mut'ah.

It is desirable to give mut'a to even that woman with whom the man has had enjoyment (intercourse) along with her mahr<sup>91</sup>. This is a way of fulfilling the implication of the Qur'aanic injunction that the rule of amicable conduct should not be dispensed with even while separating from the wife: فَاِمْسَاكٌ بِمَعْرُوفٍ اَوْ تَسْرِيحٌ بِاِحْسَانٍ (Either you retain her on reasonable terms or release her with kindness – 2:229).

## 23. Importance of the payment of mahr

Mahr holds great importance in Islaam. Quran has counted its payment among the duties of the husband: فَأَتَوْهُنَّ أَجُورَهُنَّ فَرِيضَةً (Give them their Mahr as a duty – 4:24). From hadiths, we come to know that if the husband is unable to pay the complete Mahr at the time of the marriage contract, then he should pay at least a part of it to the wife before intercourse. When Hazrat Ali married Hazrat Faatima, the Prophet himself emphatically directed him: يَا عَلِيَّ لَا تَدْخُلْ عَلَى أَهْلِكَ حَتَّى تُقَدِّمَ لَهُمْ شَيْئًا (Ali! Present something to your wife before you meet her in seclusion.<sup>92</sup>)

The thinking that Mahr should be paid by the husband only at the time of separation or paid from his inheritance on his death is a totally non-Islamic and Ignorant-like concept. Like other compulsory dues, Mahr is also a due, so the husband should unburden himself as soon as possible by paying the Mahr.

Unfortunately, many youths in our society consider the appointment of Mahr as a mere ritual, and do not even intend to pay it. This is a grave sin. The Prophet said that if a person appoints Mahr (in the marriage contract) but does not intend to pay it, then he is a zaani (adulterer or fornicator). According to some reports, he will be presented before Allaah on the Day of Judgement as a zaani<sup>93</sup>. The Qur'aan says that if the husband has paid the Mahr and then the couple have to separate, even then the husband should not resort to any trick to get Mahr back from the wife<sup>94</sup>. Wish that these warnings and the Prophet's directions helped in enflaming the sparks of feeling and awakening the conscience of people who are so fearless of Allaah.

<sup>87</sup> Qur'aan 2:236 لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمْ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَىٰ الْمُوسِعِ قَدَرُهُ وَعَلَىٰ الْمُقْتِرِ قَدَرُهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَىٰ الْمُحْسِنِينَ. (There is no sin on you, if you divorce women while yet you have not touched (had sexual relation with) them, nor appointed to them their Mahr. But bestow on them (a suitable gift), the rich according to his means, and the poor according to his means, a gift of reasonable amount is a duty on the doers of good.)

<sup>88</sup> Ziqq pl. ziqaaq: a unit of capacity in those days.

<sup>89</sup> Al Bahrul Muheet 2/233, Ahkaamul Qur'aan by Jassaas 1/434.

<sup>90</sup> Tafseer e Maajidi 1/96 publisher: Taaj Company, Karachi.

<sup>91</sup> Hidaaya 2/326

<sup>92</sup> Majma'uz Zawaa'id 4/283

<sup>93</sup> Majma'uz Zawaa'id 4/284 – Chapter about the person who intends not to pay his wife's Mahr.

<sup>94</sup> Qur'aan 4:20-21 وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَّكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونَ بِهُلَّتَانِ وَإِنَّمَا مُبِينًا {20} وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِّيثَاقًا غَلِيظًا {21}.

## 24. Practice of dowry

The unfortunate practice of dowry which has become an inseparable part of marriage in our society is completely unjust in addition to being non-Islaamic. The Shari'a has laid the responsibility of all kinds of expenses in matters of marriage upon the shoulders of men and has called this the basic reason for man's supervisory position in the conjugal relationship: الرَّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ (Men are the protectors and maintainers of women, because Allâh has made one of them to excel the other, and because they spend (to support them) from their means – Qur'aan 4:34)

Therefore, Mahr, day-to-day expenses, garments and clothing, medicine and treatment, and other necessities like waleema and financially supporting the children are all responsibilities of men. So we have the ruling in books of Islaamic law (jurisprudence) whether the extra money demanded by bride's people from the bridegroom is permissible or not and whether it should be considered bribe or not. As for the demand from the bridegroom for dowry, ghoraa joraa and tilak (synonyms for dowry), there is probably no mention in the books of Islaamic jurisprudence. In the eyes of the fuqahaa (Islaamic jurists), there was no conception of such shameless beggary by men.

It is wrong even from the angle of equality between one's children, which is compulsory. Giving the daughter a huge amount of money and numerous dowry items while depriving the son from a similar gift is a clear injustice contrary to the principle of fairness. Actually, this custom has been imported to the Muslim society from our compatriots, the Hindus. Since, there is no notion of inheritance for daughters in the Hindu religion – in fact, the daughter's relation with her family get cut off with the marriage contract itself –, they used to send their daughters with some things while seeing her off as bride. On the other hand, in Islaam, the relation of the daughter remains intact even after marriage and she has right in the inheritance as well.

It is true that some reports mention the Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ giving some important household commodities to Hazrat Faatima (at the time of her marriage):

جهز رسول الله صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ لفاطمة في خميل وقربة ووسادة حشوها إزخر.  
(The Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ gave (his daughter) Faatima عَنْهَا اللهُ رَضِيَ a mattress, an earthen jar and a pillow filled with izkhir grass as *jahez*.<sup>95</sup>)

But calling this dowry in its prevalent sense is wrong because of several reasons. First, it is probable that the Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ had got these things made out of the money obtained by Hazrat `Ali (Hazrat Faatima's husband) through the sale of his armour for this occasion on the orders of the Prophet. Second, the Prophet was not only Hazrat Faatima's father but also Hazrat `Ali's guardian and patron, having taken care of him through till his ( `Ali's) childhood and youth. The situation was such that Hazrat `Ali had no house (having left back all his properties and possessions in Makka), nor the necessary commodities for a house. So as the patron and guardian of the couple, the Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ provided for all the commodities necessary for setting up a living home. So this was not a dowry for Hazrat Faatima. It was only a provision for setting up a new home by the Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ who was the patron and guardian of each of the couple. It is necessary to take this interpretation as the holy Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ had daughters other than Hazrat Faatima, about whom there is no established report that the Prophet gave them something (for their marriage). Thus, if we accept that the Prophet gave Faatima something as dowry, then it is evidently against fairness (among offspring) which is a distant possibility for the Prophet who had been blessed with the highest standard of character.

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by another and you have given one of them a Qintaar (of gold, i.e. a great amount as Mahr), take not the least bit of it back; would you take it wrongfully without a right and (with) a manifest sin? 4:21 And how could you take it (back) while you have gone in to each other, and they have taken from you a firm and strong covenant?)

<sup>95</sup> Nasai, narrated by Hazrat `Ali.



## 25. Sexual relation

The Prophet of Islaam has shed light on all aspects of human life and provided guidance in all those fields through his noble model of conduct. Thus like the public matters, he did not let the private matters also remain dark and deprived of his light of guidance. So he laid down civilised and genteel rules for the sexual act in conjugal life. The Prophet instructed that this formula should be recited before intercourse: بِسْمِ اللَّهِ اللَّهُمَّ جَنِّبْنَا الشَّيْطَانَ وَجَنِّبِ الشَّيْطَانَ مَا رَقَقْتَنَا (In Allaah's name. O Allaah! Protect us from Satan and also protect our would-be offspring.) The Prophet said that if the woman becomes pregnant due to that intercourse, the baby would be safe from Satan's evil. The purpose is that the Muslims should remember Allaah's Being even in that condition and should have the intention of obtaining offspring while being hateful of Satan. This sexual act should not be merely to satisfy one's bodily lust.

## 26. Etiquettes

The sexual intercourse should not take place in a manner that one may have to face the Qibla (the direction of the Holy Ka'ba at Makka). `Amr bin Hazm and `Ataa have called this posture avoidable: لَا يَسْتَقْبِلُ الْقِبْلَةَ حَالُ الْجَمَاعِ (One should not face the Qibla at the time of intercourse.) There should not be much conversation at that time: وَيَكْرَهُ الْإِكْثَارَ مِنَ الْكَلَامِ (Talking much is avoidable.) as this is what bashfulness and honourableness (honorificabilitudinitatibus) demand. It should take place in a completely veiled place where none should be able to see or even sense the sound. No one should be able to see even in the early stages of kissing and fondling<sup>96</sup>. The secrets of this private act should not be revealed to others. The Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ said that he is the worst man who goes to his wife and the two come in mutual contact, then he reveals the secrets of this act to others<sup>97</sup>. While commenting on the hadith, Imaam Nawawi has written that it is prohibited to narrate to others the mode of intercourse, the methods of deriving pleasure from each other and the words and acts of the woman during the act<sup>98</sup>.

It is desirable to arouse the woman's desire completely through foreplay before intercourse. The Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ used to kiss Hazrat `Aaisha and suck her tongue. Hazrat Jaabir bin Abdullaah relates that the Prophet has suggested avoiding (literally, forbidden) intercourse before foreplay<sup>99</sup>: نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ الْمَوَاقَعَةِ قَبْلَ الْمَلَاعِبَةِ.

Moreover, it is necessary the couple should be considerate towards each other during intercourse. The Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ said that if the husband calls the wife for this act and she refuses, the angels keep on cursing her till the morning<sup>100</sup>. Likewise, the husbands have been asked not to have intercourse with the wife till she is also aroused as much as you, or else you may have completed the act while her fire of desire is yet to get extinguished. If the husband has completed the act, he should not part away instantly, rather he should remain there for some more time to satisfy the woman<sup>101</sup>: فَلَا يَعْجَلُهَا حَتَّى تَقْضِيَ حَاجَتَهَا. If too frequent intercourse is harmful for the woman's health, then it should be done only as much as is bearable to her<sup>102</sup>: لَوْ تَضَرَّرَتْ مِنْ كَثَرَةِ جَمَاعِهِ، لَمْ تَجْزِ الزِّيَادَةُ عَلَى قَدْرِ طَاقَتِهَا.

It is permissible for the couple to touch each other's genitalia and other sexually exciting organs. In fact, it is reported that Imaam Abu Haneefa says that I hope that a person will be rewarded by Allaah for this<sup>103</sup>: أَرْجُوا أَنْ يُعْطَى الْأَجْرُ. Getting completely naked during intercourse is not proper as it goes against bashfulness and sense of honour. The Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ said that you should not become completely naked during conjugal

<sup>96</sup> Al Mughni 7/228 – Chapter of etiquettes of intercourse.

<sup>97</sup> Muslim 1/464 Chapter of the prohibition of revealing the wife's secrets.

<sup>98</sup> Nawawi's commentary of Muslim 1/464.

<sup>99</sup> Zaadul Ma`aad 3/173, Chapter of the Prophet's practice during intercourse.

<sup>100</sup> Bukhaari, Chapter: when the woman spends the night separately.

<sup>101</sup> Al Mughnee 7/228.

<sup>102</sup> Durre Mukhtaar, Chapter of division of turns among wives.

<sup>103</sup> Khulaasatul Fataawa 4/367, Chapter of undesirability, Sixth sub-chapter: Marriage and intercourse.



relations (intercourse)<sup>104</sup>. However, this is only a moral ruling. As per the rules, it is permissible for the husband and wife to see the entire (undressed) body of each other. In fact, it is reported from Ibn `Umar that the couple should see each other's genitalia for increasing the enjoyment<sup>105</sup>. This quote of Ibn `Umar does not contradict the above mentioned hadith (as the hadith describes what is morally preferable, it is not a binding ruling). The real purpose of intercourse is to keep the husband chaste (from women other than the wife). If a person's desires are not satisfied without this, then certainly, it will be preferable for him to do this.

## 27. Important directions

Keeping in view the disparities in human nature, dispositions, ways and desires, no particular method of intercourse has been specified. It has been left to each person's individual's desires and likings: نِسَاؤُكُمْ حَرْثٌ لَّكُمْ فَأَنُوا حَرْثَكُمْ أَنَّى شِئْتُمْ (Your wives are like a tilth for you; so approach your tilth when or how you like. – Qur'aan 2:223). In other words, the wife is a farmland of procreation for you, so you can have intercourse with her in any posture you like: standing, sitting, lying or any other position, from the front or from behind or in some other orientation<sup>106</sup>. Nevertheless, there are some directions also.

First, the unnatural path i.e., the anus should not be used for intercourse with the wife. There is a subtle hint towards this in the Qur'aan itself. The wife has been termed tilth in the Qur'aan and clearly the harvest in the form of offspring is possible only when the woman is copulated with in the natural path i.e., the vagina. Numerous hadiths have been reported which prohibit this sodomy. The Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ said, "Allaah will not cast His merciful Eyes on the person who copulates with a man or woman in the hind-path (anus)"<sup>107</sup>. Imaam Nawawi says that all notable and significant ulamaas are unanimous that copulating with a woman, in the anus is prohibited, irrespective of whether she is pure from menses or undergoing menses<sup>108</sup>. The permissibility of anal intercourse that has been reported from some pious pioneers (aslaaf) is just due to misunderstanding. The act which those pioneers have called permissible is to copulate with the woman in the vagina but in a posture wherein the man copulates with the woman from behind: فِطاً مِنَ الدِّبْرِ، لَا فِي الدِّبْرِ (the man copulate from behind, not in the behind)<sup>109</sup> (hind-path)).

Second, the man should not copulate with the wife when she is undergoing menses. Its prohibition is mentioned in the Qur'aan itself (2:222). A large number of hadiths have also been reported which forbid sex during menses<sup>110</sup>. The reason for this is obvious. Menses are a kind of filth. The human nature demands that he keep away from this filth. Moreover, copulating during menses also leads to several medical disorders which are mentioned in the books of medicine. Whatever rules have been mentioned about menses also apply to postnatal discharge (nifaas, lochia). In the state of menses, to what extent enjoyment with the wife is permitted and what is not permitted will be found in the books of jurisprudence. The readers are requested to refer to them.

## 28. Coitus interruptus (Azl)

One of the cases of intercourse is coitus interruptus or 'azl, i.e., having intercourse in such a way that sperms do not get ejaculated into a wife's vagina (but are ejaculated outside). Most of the jurists call it **undesirable**. The tones of hadiths in this regard are different. Some suggest prohibition, some suggest allowability while others indicate that it is allowed but undesirable. The correct view is that it is not free of undesirability. Shaah Waliullaah Dehlvi, a scholar of hadith of a high stature and comprehender of the delicate issues of the sharia, also takes this view<sup>111</sup>.

<sup>104</sup> Ibn Maaja, narrated by `Utba bin `Abd Salami, Chapter on concealing the body during intercourse 1/138.

<sup>105</sup> Raddul Muhtar 5/234, Sub-chapter on viewing and touching.

<sup>106</sup> Tafseer e Maajidi 1/89, published from Karachi.

<sup>107</sup> Tirmidhi 1/148

<sup>108</sup> Commentary of Muslim 1/463

<sup>109</sup> Zaadul Ma'aad 3/176

<sup>110</sup> Tirmizi, narrated by Abu Huraira, Chapter of the avoidability of copulating with a wife during menses, 1/35; Bukhaari, narrated by `Aaisha 1/44.

<sup>111</sup> Hujjatullaah-il Baaligha 2/123, Chapter of etiquettes of intercourse.

## 29. Mode and manner of intercourse

Though the shari`a has not defined a particular mode and manner of intercourse, yet some scholars have tried to explain which mode is preferable and which is not. Ibn Qayyim writes that the most advisable mode is man-over-woman. He has made a very subtle argument for this saying that the woman has been called the man's bed (firaash). This suggests that the woman should be below. On the other hand, the Qur`aan has called the man supervisor (protector and maintainer, qawwaam) of the woman and this supervisory role suggests the man should lie above. Additionally, the Qur`aan has called the spouses garments of each other. In the man-over-woman mode, the woman takes the place of bed-sheet (firaash) and the man takes the position of quilt, and the bed-sheet and the quilt are like garments for each other. This mode also has several medical advantages. On the other hand, the most odious mode is the man lying on his back with the woman over him, as it goes against the natural form and anatomy of man and woman as well as that of all male and female organisms<sup>112</sup>.

As has been mentioned above, if the woman is not physically unfit and the man demands intercourse, it is necessary for the wife to obey his order. There is no difference of opinion in the intercourse being rewardable provided it is done with the right intention as the Prophet has called it a charity: مباحعتك أهلك صدقة (Having intercourse with your wife is a charity.). But what if the man copulates with a wife without sexual desire: is it rewardable or not? Imaam Ahmad says that even in this case, it is rewardable as there is intention of obtaining offspring and even if he does not have this intention, it is nevertheless helpful in safeguarding the chastity of his youthful wife<sup>113</sup>.

## 30 Woman's right in intercourse

A question arises that according to the sharia, is it compulsory for the man to have intercourse when the woman has a desire? The Hanafees and the Shaafi`ees are unanimous that the woman has the right of intercourse only once. If intercourse has taken place once, then the woman loses her right to intercourse forever. But, according to Imaam Ahmad, intercourse is the wife's right as well. If the man has no constraint, then it is compulsory for him to meet the demands of the woman's physical desire. This view is more correct. There is a famous incident of similar kind in the time of Hazrat `Umar's caliphate in which Hazrat Ka`b ordered such a husband to essentially have intercourse with his wife every fourth day. This is what inference also demands because in the other case (the ruling that the woman has a right of intercourse only once in her life), there is great harm to the woman and she falls in danger of losing her chastity (by having sex with a man other than her husband). As far as the contention that intercourse is the right of man alone, not of woman, it does not appear correct from any angle, since both the spouses have a share in all the rights that are conferred through the marriage contract. This is the reason why if a man wants to do `azl with his independent (not slave) wife, then he has to take her permission<sup>114</sup>.

According to Imaam Ahmad, it is compulsory for the man to have intercourse with his wife at least once every four months. Ibn Manthoor quotes Imaam Ahmad as saying that if the husband does not copulate with his wife for four months in spite of being ordered to do so by a shari`a court, the couple can be separated<sup>115</sup>. If there is some constraint and suitable excuse, e.g. the husband is on a journey, then the woman's right to intercourse will become void. However, if there is no considerable problem in the husband's return to home, then the husband will be ordered to return home after the passage of six months. If the husband refuses, then the couple may be separated<sup>116</sup>.

## 31. Permanently prohibited relations

(with whom marriage can never take place)

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<sup>112</sup> Zaadul Ma`aad 2/174

<sup>113</sup> Al Mughnee 7/232.

<sup>114</sup> Al Mughnee 7/231.

<sup>115</sup> Same reference as above.

<sup>116</sup> Al Mughnee 7/232.

While the Islaamic shari`a gives marriage the status of worship, calls it the custom of the prophets, and encourages it in several other ways, it also specifies suitable limits and conditions for it. Among these conditions, a fundamental one is that the woman to be married should not be among those with whom marriage is prohibited. There are basically two cases of marriage prohibition: (1) permanent and (2) temporary.

In the shari`a there are three factors that cause permanent prohibition: (a) parentage (b) in-law relation (c) suckling relation.

Parentage (nasab) refers to those parental relations which have been termed prohibited for marriage in the Qur'aan. They include:

- (i) root lineage i.e. mother, father and their complete lineage of parents and foreparents
- (ii) branch lineage i.e. sons, daughters and their complete lineage of offspring
- (iii) siblings of the person and of the person's parents

(Sura Nisaa': 23).

In-law relation (Sihr) refers to those who are related by marriage. Among them, the root lineage (forefathers and foremothers) and the branch lineage (children and their lineage of offspring) of the spouse are prohibited. There is one detail in this regard that the wife's mother becomes prohibited forever with the marriage contract itself whether the couple has intercourse or not. But the wife's daughter will not be prohibited for the man unless he has consummated his marriage with the wife through intercourse. If the couple separate before consummation, it will be permissible for the man to marry this wife's daughter. (Sura Nisaa': 23).

The basic principle with regard to the suckling relations is that all the root lineage and branch lineage of the suckling mother as well as the suckling mother's husband become prohibited for marriage to the suckling baby. But there will be no prohibition for the siblings and other relations of the suckling baby due to this suckling relation. Thus, the prohibition of the suckling baby is limited to him and his offspring whereas the prohibition of the suckling mother spreads<sup>117</sup>.

The four Imaams (Abu Haneefa, Shaafi`ee, Maalik and Ahmad رحمه الله عليهم) are unanimous in all the above rulings. There is a difference of opinion over two issues. According to Hanafees (followers of Imaam Abu Haneefa), in addition to marriage, having illegal intercourse with a woman in her natural path (vagina, not anus) or illegal foreplay with a woman without ejaculation also establish prohibition of in-law relations<sup>118</sup>. The root lineage, branch lineage, etc become prohibited for that illegal copulation. But according to the other fuqahaa, valid marriage only establishes prohibition of in-law relations<sup>119</sup>.

The second difference is in the quantity of milk sucked by the baby which establishes suckling prohibition. Hanafees and Maalikees say that even one swallow (swig) of milk by the baby is enough for establishing suckling prohibition. Shaafi`ees and Hnbalees feel that there should be at least five swallows for the suckling prohibition to be established<sup>120</sup>. Moreover, the correct and cogent view is that the period for suckling is two years. If the baby sucks milk when he is less than two years old, then only suckling prohibition will be established. If he sucks milk after this age, suckling prohibition will not be established. According to Imaam Abu Haneefa, the suckling period is two and a half years and sucking milk in this period causes suckling prohibition.

The real reason for making these relations prohibited is known to Allaah alone, however there are a few points which general intellect can also infer.

First, there are some relations who are so close by blood that the human nature refuses to have conjugal and sexual relations with them. That is the reason why the people who claim to be atheists, fearless of Allaah and bowing to their intellect alone, also consider marital relations with mothers, sisters, daughters, daughters-in-law, mothers-in-law, aunts, grandmothers, etc. to be against bashfulness and propriety. In the entire human history,

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<sup>117</sup> Durr e Mukhtaar 2/406.

<sup>118</sup> Durr e Mukhtaar 2/276.

<sup>119</sup> Hidaaya 2/308.

<sup>120</sup> Hidaaya 2/350.

there have been only a few shameless rebels of nature who haven't felt any compunction in felling down even this wall of veil and prohibition. And such people have never and in no community been looked upon with respect.

Second, if there is no wall of prohibition even between such close relations, and marital relations between brothers and sisters, mothers and sons, fathers and daughters, fathers-in-law and daughters-in-law, etc. is made permissible; then it will be difficult for any husband to have faith in his wife's chastity and morality. This prohibition of marital relations prevents the mind from even thinking of such a sexual relation. It keeps a natural wall of veil and bashfulness which helps in maintaining mutual faith and trust. If this veil of prohibition is absent, safety from such immoral relations between young brothers and sisters who live together day and night will be impossible.

Third, modern medical experts have acknowledged the fact that marital relations between very close blood relations may lead to extremely harmful medical conditions and severe forms of diseases, particularly insanity and mental disorders, in the baby born out of this relation.

### **32. Temporarily prohibited relations**

There are some relations with whom marriage is prohibited temporarily. The fundamental principle in this regard is that if the other woman whom the man wants to marry is so closely related to his wife that if one of the two women is considered a man, then he (she) and the other (man's present wife or would-be wife) become so related that marriage between them is prohibited; then the man cannot marry the other woman as long as his marriage with the first wife continues. For example, marrying a woman while her sister, father's sister, mother's sister, brother's daughter, sister's daughter, etc. is the man's (marriage-seeker's) wife, is not permissible. Of course, if the wife gets separated, then the man can marry her relative. The Qur'aan has prohibited bringing together two sisters as wives<sup>121</sup> while hadiths prohibit bringing together aunts and niece (father's sister with brother's daughter, mother's sister with sister's daughter) as wives<sup>122</sup>.

The prohibition of bringing together these close relations is for closing the doors of the sin of breaking blood relations. The relations between co-wives is such that it is natural to have mutual hatred, malice and jealousy between them. Where such relations of mutual love, concern and sympathy exist, the Islaamic shari'a does not want to ignite the fire of relation-breaking and mutual ill-will, and thus bleed to end the existing mutual love and sisterhood.

### **33. Marriage with a woman from the Scripture People (Ahle Kitab)**

According to the Islaamic point of view, polytheism and paganism are barriers that become a hindrance in starting a marital relation. The only exceptions are the women from the Scripture People i.e. Jews and Christians whom Muslim men are allowed to marry. The Qur'aan itself says: ((Lawful to you in marriage) are chaste women from those who were given the Scripture (Jews and Christians) before your time – 5:5).

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<sup>121</sup>

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمْ اللَّائِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمْ مِّنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِكُمُ اللَّائِي فِي حُجُورِكُمْ مِّنْ نِّسَائِكُمُ اللَّائِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا.

Prohibited to you (for marriage) are:- your mothers, daughters, sisters; father's sisters, mother's sisters; brother's daughters, sister's daughters; foster-mothers (who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in,- no prohibition if ye have not gone in;- (Those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Oft-forgiving, Most Merciful. (Qur'aan 4:23) ز

<sup>122</sup> Nailul Awtaar 6/58 referencing the six true books of hadith, narrated by Abu Huraira.

Therefore, it can be said that there is unanimity on the issue of permissibility of marriage with women from the Scripture People. Hazrat Usmaan Ghani رضي الله عنه himself married a Christian woman named Naaila who later converted to Islaam. Similarly, Hazrat Talha رضي الله عنه married a Jew woman from Syria<sup>123</sup>.

Now, the question arises whether there is some difference between women from the Scripture People living in Daarul Kufr (Misbeliever state) and those living in Daarul Islaam (Islaamic state) with regard to the permissibility of marriage. Hazrat `Abdullaah bin `Abbaas completely forbids marrying a woman from the Scripture People living in Daarul Kufr (Misbeliever state). However, majority of the fuqahaa are inclined towards its undesirability. This is also the view of the Hanafi jurists: وأصحابنا يكرهون مناكحات الحرب من أهل الكتاب (Our Hanafi jurists consider marrying a woman from the Scripture People living in Daarul Kufr (Misbeliever country) as undesirable<sup>124</sup>.)

Hazrat `Abdullaah bin `Umar considered as undesirable marrying women from the Scripture People living in Daarul Islaam (Islaamic state) Ahkaamul Qur'aan by Jassaas 3/324<sup>125</sup>. In a famous incident, when Hazrat Huzaifa married a Jew woman, Caliph Hazrat `Umar ordered him to divorce her<sup>126</sup>. This suggests that marrying a woman from the Scripture People even in Islaamic states is not free of undesirability. Therefore, `Allaama Shaami writes that marrying a woman from the Scripture People from Misbeliever state is strictly undesirable while marrying such a woman from Islaamic state is simply avoidable (permissible but not recommended): (والأولى أن لا يفعل) يفيد كراهة التنزيه في غير الحربية، وما بعده يفيد كراهة التحريم في الحربية<sup>127</sup>.

The reason for the undesirability of marrying women from the Scripture People is obvious. The strong influence that the wife has on the actions as well as the views and opinions of the husband, the powerful role that the woman plays in the mental upbringing of the children, and the role she has in the general betterment or decay of the society does not need any elucidation. Moreover, the promiscuity and moral anarchy prevailing in the women from the Scripture People and their society too does not need any mention. Therefore, in these conditions, the correct view regarding marrying women from the Scripture People is the following:

1. It is permissible to marry those Jew and Christian women who have faith in the existence of God and the system of prophethood, and are not atheists or dismissive of religion.
2. But this marriage is not free of undesirability. If the marriage happens in Islaamic state, it is simply undesirable and if it happens in Misbeliever state, then it is nearly prohibited.
3. It is not permissible to marry those women who are Christians or Jews only in name, but are atheists and agnostics, in fact.
4. It is also not permissible to marry women who have become Christians or Jews after recanting from Islaam.

### **34. Marriage with a Qaadiaani woman**

As for the marriage of Muslim men with Qaadiaani women, it is completely prohibited and impermissible. The Qaadiaanis are not among the Scripture People, in fact they are in the category of Zindeeqs (hypocrite apostates). It will be appropriate to quote what this author has written in reply to an istiftaa (question seeking shara'ee advice).

“It goes beyond doubt that the shari`a has divided the Misbelievers into two categories with regard to marital relation and prohibition or permissibility of slaughtered animals: (1) Scripture People and (2) General Misbelievers. Marriage with Scripture People (women) is permitted while that with the General Misbelievers is not. Similarly, the animals slaughtered by Scripture People is permissible for eating while those by General

<sup>123</sup> Ahkaamul Qur'aan by Jassaas 3/324.

<sup>124</sup> Ahkaamul Qur'aan by Jassaas 3/326.

<sup>125</sup> The above reference 3/324

<sup>126</sup> Reported by Ibn Abi Shaiba by a defectless chain of narrators.

<sup>127</sup> “It is better not to do” means simple undesirability for women not from Misbeliever country, and the following text means strict undesirability for women from Misbeliever country.— Raddul Muhtaar.



Misbelievers is prohibited. The term Scripture People implies those who have faith in a heavenly divine religion other than Islaam and have a religious book whose revelation is confirmed by the Qur'aan, later distortions and tampering with the text notwithstanding: وكل من يعتقد ديناً سماوياً له كتاب منزل كصحف إبراهيم ر الشيث وزبور داود عليهم السلام،<sup>128</sup> فهو من أهل الكتاب، فيجوز مناكحته وأكل ذبائحه.

“Thus the matter of the Scripture People and of those General Misbelievers who openly admit their unbelief is quite evident. But the problem arises in the case of people who call themselves Muslims but are essentially Misbelievers on account of their beliefs and doctrines. What category should they be assigned: of Muslims, or Scripture People or General Misbelievers?

“Evidently, they cannot be considered Muslims owing to their Misbeliever-like doctrines, and juristic similitudes indicate that they cannot be categorized as Scripture People as well. So they will be in the category of General Misbelievers: neither will marrying their women be allowed nor eating their slaughtered animals. Islaamic jurists have called such people hypocrite apostates (Zindeeq). Hypocrite apostates have been defined as: هو الذي يظهر الإسلام ويستتر بالكفر وهو المنافق، وكان يسمى في عصر النبي منافقاً ويسمى اليوم زنديقاً (He is the person who proclaims to be a Muslim publicly, but secretly persists with Misbelief. He is a hypocrite who used to be termed a Hypocrite in the days of the Prophet صلى الله عليه وسلم and is now referred to as hypocrite apostate (Zindeeq)<sup>129</sup>.)

“For the Islaamic state, the presence of Scripture People and open Misbelievers is bearable, but the existence of such hypocrite apostates is intolerable. Therefore, jurists have written that they should be put to death, and the repentance and recantation by open apostates will be accepted but from these hypocrite apostates, even repentance will not be accepted: و قتل الزنديق بعد الاطلاع عليه بلا استتابة، وهو من أسر الكفر وأظهر الإسلام – وكان يسمى في زمن النبي صلى الله عليه وسلم وأصحابه منافقاً – بلا قبوا توبة من حيث قتله. ولا بد من توبته، لكن إن تاب قتل حداً وإلا كفر<sup>130</sup>.

“The jurists have kept the hypocrite apostate in the category of General Misbelievers and idolaters. Quoting Fathul Qadeer, `Allaama Ibn Nujaim writes: ويدخل في عبدة الأوثان والصور التي استحسناها والمعطلة والزنادقة والباطنية والإباحية، وفي شرح الوجيز: وكل مذهب يكفر به معتقده فهو يجرم<sup>131</sup>. نكاحها، لأن اسم المشرك يتناولهم جميعاً

“On account of this, some scholars have called marriage between Ahle Sunna and Mu`tazila<sup>132</sup> as prohibited precautionally: المناكحة بين أهل السنة وأهل الاعتزال لا يجوز: كذا أجاب الشيخ الإمام الرستغني<sup>133</sup>. Some such sects like Mubayyiza and others have been termed Misbelievers in Fataawa `Aalamgiri also<sup>134</sup>. The text of Hazrat Shaah Waliullaah's book Sharh e Muwattaa – in which the indirect rejecters of the fact of the end of prophethood with Muhammad صلى الله عليه وسلم have been termed hypocrite apostates (Zindeeqs) – has made the issue quite clear and evident that Qadianis also come in the category of hypocrite apostates (Zindeeqs) and they will be considered General Misbelievers, not Scripture People as regards the rulings for marriage with their women and

<sup>128</sup> Any person who has faith in a heavenly religion and has faith in a revealed book like the Scriptures of Ibrahim, or those of Shees, or Zaboar of Dawood, falls in the category of the Scripture People. Marrying their women and eating animals slaughtered by them are permissible.– `Aalamgiri 2/8.

<sup>129</sup> Majma`ul Fiqhil Hanbali 1/144, referencing Al Mughnee.

<sup>130</sup> The hypocrite apostate (zindeeq) will be put to death after his presence comes to light, without asking him to repent – nor will repentance from him on his own be accepted with regard to his death sentence. It is compulsory for him to repent, but if he repents he will be killed on account of Had (punishment set by Allaah), else he will be killed on account of his Misbelief. – Ash Sharh us Sagheer 4/438.

<sup>131</sup> The people who approve of idols and statues, the Zindeeqs (hypocrite apostates), the Baatinees and the Ibaahees are also included in the category of worshippers of idols and statues. The book Sharh ul Wajeez mentions: “It is prohibited to marry the women of people belonging to any school of belief whose believer is categorized as Misbeliever, as the term Mushrik (idolater) includes all of them. – Al Bahr ur Raaiq 3/110.

<sup>132</sup> [Mu`tazila: It is a sect of the followers of Waasil bin `Ataa' Al Ghazzali. They believed that Qur'aan is a creation. They opened the door of intellectual inference and intellectual analysis in the matters of faith, even though the Islaamic faith based on revelation from Allaah is much beyond the scope of the limited, error-prone human intellect.]

<sup>133</sup> Marriage between Ahle Sunna people and Mu`tazila is not allowed: thus spoke Ash Shaikh Al Imaam Al Rastaghfaanee. – Khulaasatul Fataawaa 2/6.

<sup>134</sup> `Aalamgiri 2/8.

their slaughtered animals. This ruling not only conforms to the elucidations of the jurists but is also in sync with the spirit of the Shari`a which emphasizes that in all such matters, the preservation of Belief (Imaan) comes first. Owing to this, if there is a fear of adverse influence from Scripture People, the jurists have not permitted marrying their women as well.”

### 35. Polygamy

Before Islaam, there was no limit on the number of wives a man could have. Islaam limited it to four and also imposed the restriction that if the man finds himself unable to do justice among the wives, then he should be content with one wife only, and not marry more: فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً (If you fear that you shall not be able to deal justly (with them), then (have) only one (wife): Qur’aan 4:3).

Therefore, if a person is not confident that he will be able to maintain equality among all his wives, marrying a second wife is not permitted for him. Sayyid Qutub, the martyr [1906-1966], while quoting the views of the preceding and succeeding scholars, writes:

“If somebody finds himself incapable of maintaining this justice and he fears that he will be unable to do this, then only one wife is permissible for him, more than one is forbidden.

“According to Imaam Ahmad if a wife puts the condition at the time of marriage that the husband cannot marry another woman in his presence, then the husband will have to comply with this condition. If the man marries another wife, the second marriage will be valid but the first wife will have the right to separate from the husband.”<sup>135</sup>

It is a reality that in some conditions, for preserving the modesty and chastity of men, looking after widows and orphans and taking care of the greater rate of birth of females, there remains no other solution except permitting men to marry more than one wives. Even unprejudiced scholars of the West have admitted this. The orientalist and expert on Eastern cultures, Dr Gustaoli Vaan writes:

“In the West, the practice of monogamy exists only on paper. I feel that no one will deny that in reality, this practice is not present in our society. I do not know in what ways the lawful polygamy of the Easterners is considered inferior to the unlawful polygamy of the Westerners. In fact, I would say that the former is preferable to the latter in every respect.”<sup>136</sup>

### 36. The vileness of unlawful copulation

[Zinaa: unlawful copulation which includes both adultery and fornication.]

While Islaam confers the status of charity and worship to marriage and the lawful sexual relations taking place due to it, at the same time, it treats unlawful copulation as one of the worst sins. The Qur’aan has not only prohibited unlawful copulation, it has also called going near to unlawful copulation as immodesty and waywardness: وَلَا تَقْرُبُوا الزَّوْجَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا (Do not come near adultery: for it is a shameful (deed) and an evil way. – 17:32). For women, the Qur’aan has mentioned some issues on which it is necessary for them to pronounce the oath of fealty (faithfulness to Islam, bai`a) and the first among them is refraining from this very evil<sup>137</sup>. At another place in the Qur’aan, the evil has been condemned along with idolatry (assigning partners to Allaah) and homicide (murder)<sup>138</sup>. In hadiths, the state of unlawful copulation has been termed contrary to the

<sup>135</sup> Fi Zilaalil Qur’aan 1/82.

<sup>136</sup> Tamaddun e`Arab p366.

<sup>137</sup>

يَا أَيُّهَا النَّبِيُّ إِذَا جَاءَكَ الْمُؤْمِنَاتُ يُبَايِعْنَكَ عَلَىٰ أَنْ لَا يُشْرِكْنَ بِاللَّهِ شَيْئًا وَلَا يَسْرِقْنَ وَلَا يَزْنِينَ وَلَا يَقْتُلْنَ أَوْلَادَهُنَّ وَلَا يَأْتِينَ بِبُهْتَانٍ يَفْتَرِينَهُ بَيْنَ أَيْدِيهِنَّ وَأَرْجُلِهِنَّ وَلَا يَعْصِينَكَ فِي مَعْرُوفٍ فَبَايِعْنَهُنَّ وَاسْتَغْفِرْ لَهُنَّ اللَّهُ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ.

O Prophet! When believing women come to thee to take the oath of fealty to thee, that they will not associate in worship any other thing whatever with Allah, that they will not steal, that they will not commit adultery (or fornication), that they will not kill their children, that they will not utter slander, intentionally forging falsehood, and that they will not disobey thee in any just matter,- then do thou receive their fealty, and pray to Allah for the forgiveness (of their sins): for Allah is Oft-Forgiving, Most Merciful. (Qur’aan 60:2)

<sup>138</sup>

وَالَّذِينَ لَا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلَا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَلَا يَزْنُونَ وَمَنْ يَفْعَلْ ذَلِكَ يَلْقَ أَثَامًا.

state of Belief (Imaan): لا يزني الزاني حين يزني وهو مؤمن (While an unlawful copulater copulates, he is not a Believer<sup>139</sup>.) In a hadith, the Prophet ﷺ said that unlawful copulation takes away the attractiveness of one's face and snaps at nourishment (rizq)<sup>140</sup>. If a person commits unlawful copulation despite old age, the Prophet said, will never enter the Paradise and Allaah's Eyes of mercy will never be cast towards him<sup>141</sup>. The Prophet ﷺ warned that when unlawful copulation becomes prevalent among some people, they are subjected to famine<sup>142</sup>. He also said that prevalence of unlawful copulation leads to rise in the frequency of deaths: ولا فشى الزنا في قوم إلا كثر فيه الموت (Whenever unlawful copulation becomes common in a community, the rate of death increases<sup>143</sup>.) The "death" in the hadith probably refers to the appearance of lethal diseases. Nowadays everybody is aware that syphilis (a chronic disease contracted chiefly by infection during sexual intercourse), gonorrhoea (a disease characterized by pussy inflammation of the genital mucous membranes, and consequent pain during urination and discharge), certain types of cancer and a recent cureless lethal disease AIDS are mostly results of this sexual waywardness and perversion only.

Keeping in view the abhorrence of unlawful copulation, Islaam has prescribed very serious punishment on it, that is a hundred lashes for unmarried criminals of either sex<sup>144</sup>, and stoning to death for married criminals of either sex<sup>145</sup>. It is a reality that unlawful copulation is such a crime that the entire society has to face its evil consequences. Immodesty becomes common in the whole society. It becomes a source of shame and disgrace not for a man and woman alone, but for two families. The unlawful copulation also amounts to a punishment for the child to be born for a sin not committed by him. It is a rebellion against the law of nature and playing with human nobleness and, above all, it is the disobedience of the Lord of the universe. It is like invoking His displeasure and inviting His anger and wrath: أعاذنا الله منه (May Allaah protect us all from it!).

### 37. The pervert act (sodomy)

An even more disgusting form of sexual perversion is sodomy or homosexuality. It is completely unnatural and an abhorrent and disgusting crime in the eyes of Islaam. According to the authentic Qur'aanic report, Prophet Lot's عليه السلام people were subjected to a severe and terrific divine punishment for this crime only. There was a horrific rain of stones on the land and its surface was overturned<sup>146</sup>. In a hadith, the Prophet ﷺ has invoked Allaah's curse upon such a person three times<sup>147</sup>. Hazrat Abu Huraira reports that there are four people about whom the Prophet ﷺ informed that they spend their mornings and evenings (meaning all the time) in a state of Allaah's displeasure and wrath. One among them is the committer of this heinous sin<sup>148</sup>.

Owing to the heinousness of this act, the jurisprudents are confused as to what punishment should be awarded to such a criminal. Some opine that the sodomite be felled down from atop a high hill, some say that the sentence of illegal copulater be enforced on him, some others hold the view that he be awarded death sentence and still others leave it to the conscience of the judge. Upon Hazrat Ali's advice, the then Caliph Hazrat Usmaan رضي الله عنهما awarded the punishment of unmarried unlawful copulater, i.e. a hundred lashes to an unmarried

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Those who invoke not, with Allah, any other god, nor slay such life as Allah has made sacred except for just cause, nor commit fornication; - and any that does this (not only) meets punishment. (Qur'aan 25:68)

<sup>139</sup> Mishkaat, reported by Abu Huraira, 1/17.

<sup>140</sup> Majma'uz Zawaa'id 6/255, chapter of condemnation of unlawful copulation.

<sup>141</sup> The above reference.

<sup>142</sup> Mishkaatul Masaabeeh, chapter of punishments specified by Allaah (hudood).

<sup>143</sup> Mishkaat, on the authority of Maalik 2/459.

<sup>144</sup> الزانية والزاني فاجلدوا كل واحد منهما مئة جلدة (The fornicatress and the fornicator, flog each of them with a hundred stripes. - 24:2).

<sup>145</sup> Mishkaat, reported by Jaabir, chapter of punishments specified by Allaah (hudood) 1/312.

<sup>146</sup>

فَلَمَّا جَاءَ أَمْرُنَا جَعَلْنَاهَا عَلَيْهِمْ حِجَارَةً مِّن سِجِّيلٍ مُّنْقُودَةٍ ﴿٢٤﴾ مُّسَوِّمَةً عِندَ رَبِّكَ وَمَا هِيَ مِنَ الظَّالِمِينَ بِبَعِيدٍ ﴿٢٥﴾

So when Our Commandment came, We turned (the towns of Sodom in Palestine) upside down, and rained on them stones of baked clay, in a well-arranged manner one after another; ﴿٢٥﴾

Marked from your Lord; and they are not ever far from the evildoers. ﴿٢٤﴾ (Qur'aan 11: 82-83).

<sup>147</sup> Majma'uz Zawaa'id 6/272, chapter of sodomy.

<sup>148</sup> The above reference. [The four are: men who try to look like women, women who try to look like men, copulators of animals and copulators of men. - Majma'uz Zawaa'id wa Mamba'ul Fawaa'id by Nooruddin `Ali bin Abu Bakr Al Haithami, 10637, 6:420]

sodomite<sup>149</sup>. The Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ himself has instructed that both the sodomite and the sodomized be killed<sup>150</sup>. Most of the jurists are inclined towards sentencing such a criminal to death<sup>151</sup>. However, this punishment belongs to the category of ta`zeer [punishment for the crimes for which the quantum of sentence has not been fixed by Allaah], in which the shari`a court has the right to increase or decrease the quantum of punishment on the basis of particular situations and conditions.

The societies where this evil is widespread are being punished severely by Allaah with lethal and deterrent diseases in this life itself. And in addition, they have to face the divine punishment in the Hereafter: إِنَّ بَطْشَ رَبِّكَ لَشَدِيدٌ (Truly, the grip of your Lord is strong – Qur’aan 85:12).

### **38. Bestiality (Copulation with animals)**

Another similar detestable sexual perversion includes satisfying one’s sexual desire with animals (bestiality). In reality, it is an act on which even animality’s forehead of modesty becomes wet with sweat. The Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ has severely condemned this act. According to a report, the Prophet has ordered both the bestiality-committer and the animal subjected to bestiality to be killed<sup>152</sup>. However, the jurists have interpreted that this hadith is meant only to demonstrate the severity and heinousness of the crime<sup>153</sup> and have called this punishment of death as ta`zeer<sup>154</sup> allowable only, for a habitual criminal. Nevertheless, they are unanimous that such a person deserves punishment. The animal should also be slaughtered and no benefit should be derived from it whether before slaughtering or after<sup>155</sup>. Some hadiths also mention that the animal should be burnt after slaughtering<sup>156</sup>, but burning is not compulsory<sup>157</sup>. The real purpose is to erase the symbol of this evil (the animal subjected to bestiality). If the animal is not finished off, it will be pointed to (and thus serve as a reminder of this evil). The talk of this evil will spread and the human mind will automatically turn towards the thought of this evil on seeing this animal.

### **39. Control of sexual waywardness**

To stop the unlawful, to safeguard the chastity and honour and to safeguard human modesty and bashfulness, the shari`a has undertaken various measures, the first among which is marriage. Other than this, some more precautionary measures have also been taken. Of these, the prohibition of evil gaze (gazing an unrelated woman) and the asking for permission to enter a house hold special importance. The Prophet said that the evil gaze is the unlawful copulation of the eyes<sup>158</sup>. The Prophet said that the genitalia only carries out the confirmation of the highest level, otherwise eyes, hands, feet and tongue all do the unlawful copulation, i.e. aid this act of unlawful copulation<sup>159</sup>. The reason being that the first thought of the evil comes through the eyes. So Allaah has ordered the Believers to lower their gaze: قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ (Qur’aan 24:30). The same command has been given to the women also, that they should lower their gaze and not reveal their jewellery and ornaments<sup>160</sup>. The Prophet has termed the gaze as a poisonous arrow out of the arrows of the Satan.

<sup>149</sup> Majma`uz Zawaaid 6/272.

<sup>150</sup> Nasbur Raaya 2/93, citing Mustadrak by Haakim, narrated by Ibn `Umar.

<sup>151</sup> At Tashree`ul Jinaai Al Islaami 1/688.

<sup>152</sup> Majma`uz Zawaaid 6/272, chapter of the person who copulates with an animal.

<sup>153</sup> [Not a mandatory orde. The hadith would mean that the crime is so detestable that not only the committer but also the animal which has no will-power or power to resist and protest also deserve to be killed.]

<sup>154</sup> [ta`zeer: punishment for the crimes for which the quantum of sentence has not been fixed by Allaah]

<sup>155</sup> Durre Mukhtaar 3/23.

<sup>156</sup> Kitaabul Aasaar by Imaam Muhammad, page 92.

<sup>157</sup> Al Mabsoot 9/102.

<sup>158</sup> Majma`uz Zawaaid 6/256, chapter of unlawful copulation by other organs, reported by `Alqama who quotes the companions of the Prophet.

<sup>159</sup> The above reference, narrated by Sahl bin Umaama.

<sup>160</sup> قُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ (Say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments: Qur’aan 24:31).



If the women step out of the house because of some necessity, then also they have been directed not to show off and display their beauty<sup>161</sup>. They should avoid the central part of the roads and instead use the margins for walking. If they come to a mosque, then they should be in the last row. They should not converse (with unrelated men) in a soft tone<sup>162</sup>. Their voice should not be sweet and appealing to attract the hearts of unrelated men<sup>163</sup>. A woman and an unrelated man should not come together in a lonely place. The Prophet said that in such a condition, the third companion is the Satan: لا يخلون رجل بامرأة إلا كان ثالثهما الشيطان<sup>164</sup>. Actually, all these restrictions are there because the evil of the worst level (unlawful copulation) does not occur with just one passing of thought. Rather this poison intensifies step by step. First, there is a meeting of sights, then the arrow of sight gets down into the heart and the heart begins to burn with passion. Later, the tongue tears down the cloak of modesty to pieces as it puts forth its request for fulfilling the evil desire. Then the situation of being together at a solitary place further conflagrates the flame of this evil. Meanwhile, the display of jewellery and ornaments, show off like in the days of ignorance (whether of the sixth century or of the twenty-first), and the sweetness of speech goes on igniting and aggravating the fire of this evil passion, till one day, matters culminate to the point where the person commits this sin of the severest kind. When the body of a person, particularly a woman, sheds the cloak of modesty once, her lust-seeking and indulgence-craving body never again agrees to wear this cloak. The person who would, till yesterday, blush while raising her eyes and feel uneasy while opening her mouth, today begins to enjoy dancing and saltating in dance-halls, and relish teasing the music-strings of her fans' hearts and playing music on the wires of their spirits. Therefore, the Islaamic shari`a puts a brake to this evil at the start itself and prevents the spark of this evil from glowing and turning into flame and fire.

#### 40. Masturbation

Masturbation or ejaculation with hands is also a form of sexual waywardness. Islaam views the entire existence of a man and all his capabilities as a trust from Allaah. Allaah's Power has created them for a particular purpose. So whoever makes wrong use of any organ of his body, in fact breaches Allaah's trust and commits the sin of deforming Allaah's creation according to his whims. The sexual capability and the seminal fluid which are present in a human are also not without purpose. They are there to bring about growth and numerical increment of the human race. So any act of sexual perversion whether through masturbation and manual ejaculation, or through sodomy with a boy or with one's own wife is completely contrary to this aim.

So this act is also forbidden and prohibited. The holy Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ said that Allaah will not cast a look (of mercy) at such people<sup>165</sup>. In another narration, the Prophet has invoked Allaah's and angel's curse upon such people<sup>166</sup>. The verses nos. 5 – 7 of Sura Mu'minoon are also put forward to support the prohibition of masturbation. In these verses the permitted ways for fulfilling one's sexual desire have been limited to two only: one's wife and one's slave-girl. Evidently, this is a third way [so it is prohibited]. The Hanafi jurists have called it a punishable offence.

Indulging in masturbation only to satisfy one's lust is not at all permitted. However, if a person is overwhelmed with sexual desire, and so he does this to save himself from unlawful copulation and to calm down his desire, then some jurists write that there is hope that he will not suffer punishment in the Hereafter<sup>167</sup>. In such a condition of 'necessity', Ibn `Abbaas, `Abdullaah bin `Umar, Muhaahid, Hasan Basari and others رَضِيَ اللهُ عَنْهُمْ are reported to have called it permissible<sup>168</sup>. Manual ejaculation for the purpose of treatment or medical diagnosis also falls under this 'necessity' (which makes it permissible). However, all these cases are rare occurrences.

<sup>161</sup> وَقَرْنَ فِي بُيُوتِكُنَّ وَلَا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الْأُولَى (Stay in your houses, and do not display yourselves like that of the times of ignorance. – Qur'aan 33:33).

<sup>162</sup> فَلَا تَخْضَعْنَ بِالْقَوْلِ فَيَطْمَعَ الَّذِي فِي قَلْبِهِ مَرَضٌ وَقُلْنَ قَوْلًا مَعْرُوفًا (Be not soft in speech, lest he in whose heart is a disease (of hypocrisy, or evil desire for adultery) should be moved with desire, but speak in an honourable manner. – Qur'aan 33:32).

<sup>163</sup> Raddul Muhtar 1/284.

<sup>164</sup> Whenever a man gets together with a woman in a lonely place, their third companion is Satan. (Mishkaat 2/269)

<sup>165</sup> Kanzul `Ummaal 8/192.

<sup>166</sup> Kanzul `Ummaal 8/194.

<sup>167</sup> Khulaasatul Fataawaa 1/260, chapter of fasting, sub-topic of copulation.

<sup>168</sup> T laaus Sunan 11/277, chapter of the hadiths reported regarding manual ejaculation.



Making a habit of it cannot be allowed for any person in any case, as it not only adversely affects the committer's character and moral and amounts to rebellion against nature, it is also very detrimental to a person's health.

## **41. Lesbianism (female homosexuality)**

Just as the unnatural act between men (sodomy) is prohibited, so is the unnatural act between women which is called lesbianism or sapphism. The holy Prophet ﷺ said that a woman should not lie with another woman under one sheet (blanket)<sup>169</sup>. Hazrat Waasila narrates that mutual indulgence between women is zinaa (unlawful copulation).<sup>170</sup> In another hadith, the Prophet has called it a sign of the nearness of the Last Day, that a woman gratifies herself with another woman and a man with another woman<sup>171</sup>.

Allaah's Power has created man and woman as the objects of each other's sexual requirement and its fulfilment. And the purpose of this is also not mere fulfilment of desire, its purpose is the growth of human race and the continuity in existence of the species. Homosexuality hinders the accomplishment of this goal and is a totally unnatural act.

## **42. Establishment of parentage**

Islam lays immense importance to the preservation and identification of parental lineage as it is one of the most obvious distinctions between humans and animals. For this purpose, it has been made compulsory for the woman to wait for the prescribed period (ʿidda) after separation from the first husband and before marrying a second husband. The prohibition of unlawful copulation has been made very strict. There can be two cases when a person becomes without filiation (parentage): a person may deny fatherhood to his baby (by saying that I am not his father) or an offspring may associate himself with some other persons than his real parents. The Prophet ﷺ has condemned both these acts. He said that if a person denies fatherhood to his offspring to humiliate him in this world, then Allaah will humiliate him in the Hereafter<sup>172</sup>. One of the hadiths say that such a father and a son – who denies his association with his real father – are among those whom Allaah will neither talk to, nor purify from sins, nor cast a look of mercy upon (them)<sup>173</sup>.

The Prophet ﷺ has laid down the principle that the husband of the woman who gives birth to a baby will be considered the father, and the fatherhood of the unlawful copulator will not be considered: الولد للفراش وللعاهر الحجر (The baby will be considered to be of the bed-owner (husband of the child-bearing woman) and for the unlawful copulator there is stone only.<sup>174</sup>). Keeping in view the general temperament of the shariʿa, the jurists have formulated the rule that all possible attempts will be made to establish the correct parentage of a child and associating a person with unlawful copulation or being the fruit of unlawful copulation will be avoided. Therefore, the jurists have gone to the extreme of caution in determining the maximum period of pregnancy, and some jurists have even gone to the extent of exaggeration. According to Imaam Abu Haneefa, the maximum period of pregnancy is two years<sup>175</sup>. Thus if the child is born to a woman within two years of her husband divorcing her, then also parentage of the baby is established.

## **43. Birth through test tube**

Contemporary scientific developments and discoveries have made possible some new ways of reproduction. One of them is birth through test tube (test tube breeding). Basically, there are two ways of test tube breeding:

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<sup>169</sup> Al Muhallaa 11/391.

<sup>170</sup> Majma'uz Zawaaid 6/256 citing Tabaraani and Abu Ya'laa, chapter of unlawful copulation through other organs.

<sup>171</sup> Majma'uz Zawaaid, with a weak chain of narrators, 8/332.

<sup>172</sup> Majma'uz Zawaaid 5/15, narrated by Ibn 'Umar, chapter of the person who denies his relation to his offspring or parent [4/652, 7862, chapter 23]..

<sup>173</sup> The previous reference [4/652, 7863, chapter 23]. [The other such person mentioned in this hadith is he on whom some people bestow favours, but he denies the favours of his benefactors and dissociates himself from them.]

<sup>174</sup> Majma'uz Zawaaid 5/13, chapter of "the child belongs to the bed-owner".

<sup>175</sup> Hidaaya 2/43, chapter of establishment of parentage.

The **first** is to mix the semen and ovum of a man and woman not married to each other, and thus bring about reproduction. This case is **not permissible**, no matter the reproductive cells are mixed in a test tube, or in the uterus of the woman herself, or in the uterus of the man's legal wife. The reason being that it amounts to tampering with the parentage of the to-be-born baby and the actual reason for prohibition of unlawful copulation is this tampering and consequent confusion in parentage only. There are clear texts in this regard. The Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ said: لا يَحِلُّ لِمَرَأٍ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ يَسْقِيَ مَاءَهُ زَرْعَ غَيْرِهِ (It is not permissible for any person who has faith in Allaah and the Last Day that his water (semen) should irrigate the farm (wife) of someone else<sup>176</sup>).

The **second** method is to mix the semen and ovum of a legally married couple and thus bring about reproduction. This can also take various forms [all of which are permissible]:

- The husband's semen is transmitted to the wife's uterus through injection, etc.
- The reproductive cells of the husband and wife are obtained, then grown in a test tube for a limited period, and finally transmitted to the wife's uterus.
- The reproductive cells of the husband and one of his wife's are obtained, and the mixture is transmitted to the uterus of the man's another wife, because his first wife is unable to bear the pains of child-labour or is unable to bear a child due to some medical conditions.

This writer (Maulaana Khalid Saifullah Rahmani) feels that these cases require masturbation for the husband, revealing of private parts in front of the nurse for the wife, and in a way, application of an unnatural method for pregnancy, yet if the woman is medically incapable of pregnancy and the couple have strong desire for a child, it can be permitted. This is, after all, a form of treatment and there is scope for leniency in the shari`a in matters of medical treatment. Nevertheless, it is better to avoid all these methods.

It goes without question that the father of the baby would be the man whose semen has been used. For establishment of parentage, impregnation of the wife with the husband's sperms (semen) is enough; physical intercourse is not a requirement<sup>177</sup>. As for the case when the ovum of the man's one wife is taken and the mixture of the semen and ovum are grown in the man's another wife and the other wife bears the labour-pain, then apparently, this other wife should be considered the baby's mother as the Qur'aan has called the woman who gives birth to a child as the mother. However, since the ovum of the first wife has been the base and foundation for the baby's creation, she should also be considered as his mother. There are examples in the jurists' works where the parentage of a child is associated with two persons<sup>178</sup>.

#### **44. Li'aan (Mutual cursing between the spouses)**

The shari`a has made safeguarding of the honour of Muslims compulsory. The Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ has called the Muslims' honour similar to the Holy Ka`ba in sacredness. Hence, spying against Muslims has been forbidden and similarly, misplaced suspicion has also been deemed undesirable. The Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ has forbidden going after one's wives faults<sup>179</sup>. On return from a long journey, the Prophet directed that instead of entering the houses at night, the caravan should spend the night outside the town and inform of his arrival at his home in advance<sup>180</sup>. Therefore, the husband should have faith in his wife's character and keep himself away from baseless doubts and suspicions.

But the husband should also not become devoid of all sense of honour and bashfulness, and tolerate immodesty on the part of his wife. Therefore, the shari`a has taken all the precautionary measures as mentioned

<sup>176</sup> Sunan Tirmidhi.

<sup>177</sup> `Aalamgiri 3/343, published from Deoband.

<sup>178</sup> Al Bahr ur Raaiq 3/119. For details, refer the writer's article "Birth through rest tube and associated rulings" in the book Jadeed Fiqhi Masaail, volume 2.

<sup>179</sup> Takhreeju Ihyaa il Uloom by `Iraqi 2/45 citing Tabaraani who quotes Jaabir.

<sup>180</sup> The above reference quoting Muslim.

above. However, if the evil of the worst kind, i.e. unlawful copulation, still gets committed by the wife, then what should the husband do?

According to the general principles of the shari`a, he should bring four witnesses [to the court], and if he is unable to do this, he should be prepared to face the Allah-decreed punishment (hadd) of eighty lashes for slander. But it's a fact that the availability of four eye-witnesses in such cases is nearly impossible. Here, the matter does not pertain to only making a false charge against another person's life; instead it is a question of the continuance or discontinuance of mutual faith and trust in one's own life, since the immodesty of a married woman amounts to a direct humiliation of the husband, makes the parentage of his child suspect and destroys his peace.

So the shari`a has laid down a special, exceptional ruling in this case. Each of the spouses is made to testify on oath regarding the truthfulness or falsehood of the accusation, four times each. The fifth time, the husband has to testify that if he is lying in his accusation, then Allaah's curse be upon him. Similarly, after four testimonies on oath by the wife, she has to testify a fifth time that if her husband is truthful in his charge, then Allaah's wrath be upon her. (Qur'aan 24:6-9<sup>181</sup>)

If the husband denies his fatherhood to the baby immediately after he is born or at the time when compliments, etc. are received, then the judge will separate the couple through li`aan (mutual curse) and in addition, the parentage of the baby will not be established with that man and the baby will have no share in the inheritance, etc. of the man. However, if the time of compliments etc. is over and then the husband claims that the newborn is the result of unlawful copulation (and hence not his child), then the two will be separated through li`aan (mutual curse), but the parentage of the newborn will be associated with the husband only<sup>182</sup>. Nevertheless, it must be born in mind that making such a grave charge against one's wife merely on account of doubt, suspicion or probability is a grievous sin and reprehensible act. Li`aan is to be used only when a husband finds his wife committing the crime and sees her involved in the very act of unlawful copulation.

## 45. Eelaa and Zihaar

[Eelaa = oath against conjugal relation.

Zihaar = calling one's wife similar to any of the women related to him by blood]

Eelaa and zihaar are among the sins associated with marital relations. Eelaa means taking an oath not to have sexual relations with one's wife. After that if the man does not have sexual relations with his wife for four months, the wife gets divorced by default (Qur'aan 2:227183). Zihaar is comparing one's wife or one of her organs with one of the women among his blood relations or one of the latter's organs, looking at which is prohibited for the man. Since Zihaar implies hurting the wife, it is a sin and disobedience of Allaah. As a punishment, the husband cannot have intercourse with the wife until he has completed the prescribed repentance-act (kaffaara). The repentance-act for zihaar is to free a male or female slave, if not possible then to fast for two

<sup>181</sup>

وَالَّذِينَ يَزُمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ {6} وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ {7} وَيَذَرُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ {8} وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ {9}

[024:006] And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies by Allâh that he is one of those who speak the truth.

[024:007] And the fifth (testimony should be) the invoking of the Curse of Allâh on him if he be of those who tell a lie (against her).

[024:008] But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allâh, that he (her husband) is telling a lie.

[024:009] And the fifth (testimony) should be that the Wrath of Allâh be upon her if he speaks the truth.

<sup>182</sup> Hidaaya 2/420.

<sup>183</sup>

لَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ {226} وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ {227}

[002.226] Those who take an oath not to have sexual relation with their wives must wait for four months, then if they return (change their mind in this period), verily, Allâh is Oft-Forgiving, Most Merciful.

[002.227] And if they decide upon divorce, then Allâh is All-Hearer, All-Knower.

months [without break] and if this is also not possible then to feed sixty destitutes (Qur'aan 58:3184). The specification of penalties and the compulsoriness of repentance-acts indicate that eelaa and zihaar are sins and acts undesirable to Allaah<sup>185</sup>.

## 46. Family planning

One of the important social issues in the contemporary times is birth control and family planning. Some western thinkers have presented the theory of birth control as a matter of necessity to maintain the balance between economic resources and requirements. Basically, Islaam does not favour family planning on account of economic reasons. Islaam teaches the firm faith that Allaah Who creates needy humans and animals in the world, also suitably increases economic resources and food products, as He is the Great Nourisher and also All-Knowing and All-Powerful Being.

Sometimes, there may be some particular medical necessity for a patient to adopt some form of birth control as a matter of dire necessity. In that case, it is allowable. There are various ways of birth control which differ in their rulings, so their respective rulings are mentioned below under separate headings.

## 47. Permanent birth control

The method of birth control or contraception which puts an end to reproductive capability forever is **totally prohibited**. In our days, this is achieved through vasectomy on men and tubectomy on women. In old days, castration was done for this purpose. Some holy companions wanted to castrate themselves so that free their maximum time for worship, but the holy Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ forbade them. Hazrat Sa'd bin Abi Waqqaas reports that if the Prophet had allowed this, we would have performed castration: *رد رسول الله صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ على عثمان بن مظعون التبتل، ولو أذن لاختصينا* (The Prophet forbade Usmaan bin Maz'oon the life of singlehood. Had he got the permission, we would have performed castration<sup>186</sup>). Owing to this, the jurists have called castration prohibited. Qaazi Abul Hasan Maawurdi writes: *ويمنع من اختصاء الأدميين والبهائم ويؤدب عليه (الأحكام السلطانية)* (Castration of men and animals will be forbidden and the committer will be punished. – Al Ahkaamus Sultaaniyah).

In addition to castration, Haafiz Ibn Hajar has also called the application of medications which deprive a person of the reproductive capability as prohibited. He has reported consensus on this. *والحجة فيه أنهم اتفقوا على منع الجب والخصاء، فيلحق بذلك ما في معناه من التداوي بالقطع أصلاً* (The argument for this is that the scholars have agreed on castration and cutting away of the male genitalia being forbidden. So what is similar to it in essence will also have the same ruling, that is medication to completely sterilize a person.<sup>187</sup>)

## 48. Abortion after spirit is blown into the foetus

For dealing with the issue of abortion, we will have to consider its two cases. The first is when life has been created in the embryo. According to hadith, the spirit (in the embryo) is created after four months or 120 days of conception. Probably, modern embryologists also concur with it. So abortion at this stage, after spirit has been blown, is **prohibited** by consensus. Ahmad `Ulaish Maaliki writes:

*إسقاط* (Causing abortion after the blowing of spirit is prohibited by consensus and it is a kind of homicide<sup>188</sup>). Fataawaa Shaikhul Islaam Haafiz Ibn Taimiya mentions: *إسقاط المَوُودَةُ سُئِلْتُ، بِأَيِّ ذَنْبٍ قُتِلْتُ؟ الحمل حرام بإجماع المسلمين وهو من الوأد الذي قال تعالى فيه: وَإِذَا* (Abortion is prohibited by the

<sup>184</sup>

وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَاسَا... {3} فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِنْ قَبْلِ أَنْ يَتَمَاسَا فَمَنْ لَمْ يَسْتَطِعْ فإِطْعَامُ سِتِّينَ مِسْكِينًا {4}...

[058:003] Those who make unlawful to them (their wives) by Zihâr and wish to free themselves from what they uttered, (then penalty in that case is) the freeing of a slave before they touch each other. [058:004] He who does not find (the money for freeing a slave) must fast two successive months before they both touch each other. He who is unable to do so, should feed sixty Masâkin (needy).

<sup>185</sup> For the rulings regarding eelaa and zihaar, refer this writer's book "Talaah o tafreeq", p. 48-53.

<sup>186</sup> Bukhari and Muslim, narrated by Sa'd bin Abi Waqqaas.

<sup>187</sup> Fathul Baari 9/97.

<sup>188</sup> Fathul `Ali Al Maaliki 1/399.



consensus of Muslims as it is a kind of “burying alive” about which Allaah the Exalted says: “When the female (infant) buried alive (as the pagan Arabs used to do) shall be questioned: For what sin was she killed?”<sup>189</sup> – Qur’aan 81:8-9.)

However, if the embryo is alive inside the womb and it becomes impossible to save the life of the mother without its abortion, then it should be allowable. In this case, out of these two losses, the death of the mother is more severe while that of the embryo is less severe. Moreover, the existence of the mother is observable and palpable whereas that of the child is only probable. In a somewhat related situation, the jurists – preferring less evident analogy over more evident analogy – have allowed the killing of those Muslims whom the Misbelievers use as human shields since the loss of the Islaamic country from the Muslims is a bigger harm than the death of a few Muslims.

Here those texts may cause doubt in which the jurists have forbidden saving the life of one person by killing another, for example, Ibn Nujaim’s text: *لأن إحياء نفس بقتل نفس أخرى لم يرد في الشرع* (... as the saving of a life by killing another life has not been prescribed in the shari’a.<sup>190</sup>) or the text of Sharh us Siyar il Kabeer: *المسلم لا يحل له أن يقي روحه بروح من مثله في الحرمة* (It is not permissible to save a Muslim’s life by killing another equally sacred life<sup>191</sup>.) However, it must be remembered that this applies when the two lives or the two existences are of equal status. But here, the existence of the mother is palpable whereas that of the embryo is only palpable.

#### **49. Abortion before spirit is blown into the foetus**

The texts of some jurists regarding the abortion of foetus before the spirit is blown create a doubt that they consider it permissible and correct without restriction. Such texts are present in the juristic texts of Hanafis, Shaafi’ees as well as Hanbalis. On the other hand, Maalikis and Imaam Ghazaali among the Shaafi’ees have called abortion before spirit is blown also as impermissible without restriction. However, the reality is that this permissibility near Hanafis, Shaafi’ees and Hanbalis is also restricted to the case when there is some necessity, with the abortion without necessity being forbidden and sinful near them also. `Allaama Ibn `Aabideen Shaami writes: *لا يخفى أنها تأثم إثم القتل لو استبان خلقه ومات بفعلها* (It is clear that if the structure of the embryo becomes clear and it dies due to some act of the mother, then she will bear the sin of murder<sup>192</sup>.)

Abortion is not permissible even before the manifestation of organs (and after conception): *إنه يكره فإن الماء* (Abortion before the manifestation of organs is also avoidable as the end of the seminal fluid after it reaches the uterus is life, so it will have the rulings associated with a living being; as is the case with the egg of a bird of hunting, in the Haram<sup>193</sup> [sacred region in and around Makkah where taking any life is liable to penalty].).

Thus, it is almost clear as light that abortion before blowing of spirit (before four months from conception) is also **not permissible unless there is some excuse** which is acceptable to the shari’a. Wherever unrestricted permissibility of abortion are mentioned in Zaheeriya and `Alamgiri, etc., it applies to abortion in the condition of excuse (necessity) only.

There can be two kinds of excuses. The first relates to the embryo itself like congenital defect, physical deformity, presence of fatal hereditary diseases, etc. Abortion may be permitted due to these reasons. Before the embryo becomes well-formed, its abortion is allowed, with some restrictions, even for protecting the suckling baby’s lactation from adverse effects. On the other hand, the serious harm that the baby-to-be-born himself is likely to face after birth, in the case under consideration, is in essence more severe than the harm for the suckling infant. Therefore, abortion should be preferentially permissible in these cases.

<sup>189</sup> Fataawaa Ibn Taimiya 4/317.

<sup>190</sup> Al Bahrur Raaiq 8/205.

<sup>191</sup> Hidaaya, chapter of li’aan (mutual cursing).

<sup>192</sup> Raddul Muhtaar 5/519.

<sup>193</sup> The above reference, 5/552.



The second type of excuses are those related to the mother, for example, threat to the mother's life, fear of her losing mental balance, inability to rear the to-be-born baby on account of her physical or mental disability provided that no other relations are present who may be expected to look after the baby, her getting pregnant by rape, etc. In all these cases, abortion will be allowed before spirit is blown into the foetus (within four months of pregnancy), as the jurists have permitted abortion even in inferior kinds of excuses. But, if the parents do not want a baby without reason and hence go for abortion, or there is a possibility of adverse effect on the mother's general health while there is no fear of any critical disease, then in these cases, abortion does not seem correct even before the spirit is blown.

## 50. Contraceptive pills

The method of temporary birth control in which such medicines are taken that incapacitate the male sperms after they enter the women's reproductive tract, rendering them incapable of reproduction, is also **not permissible without necessity**.

Shamsul Aimmah Sarakhsi says: ثم الماء في الرحم ما لم يفسد فهو معد للحياة، فيجعل كالحي في إيجاب ذلك الزمان بإتلافه كما يجعل بيض الصيد في حق الحرم كالصيد في إيجاب الجزاء عليه بكسره (As long as the seminal fluid does not get spoilt in the uterus, it has the capability to become a living being. So, if it is destroyed (killed), it (the embryo in the earliest stages) is like a living being in the matter of imposition of penalty. It is similar to the case of a person in haram (Makkan sanctuary) breaking an egg of a game, in imposing penalty on him due to this breaking.<sup>194</sup>)

Shaikh Ahmad `Ulaish Maaliki writes: لا يجوز استعمال دواء لمنع الحمل. وإذا أمسك الرحم المنى، فلا يجوز للزوجين ولا لأحدهما ولا للسيد التسبب في إسقاطه قبل الخلق على المشهور (Medication for contraception is not permitted. When the uterus holds the spermatic fluid; then, according to the well-known view, it would not be permissible for the spouses, nor for any one of them, nor for the master (of the pregnant slave) to adopt any method of abortion (even) before the embryo becomes well-formed.<sup>195</sup>)

## 51. External methods for contraception

Using condoms or placing a cover over the woman's uterine cervix (uterus-mouth) for temporary contraception is exactly similar to the coitus interruptus<sup>196</sup> which finds mention in the reports of the early Islaamic days. There is a difference of opinions among the jurists regarding the permissibility or avoidability of coitus interruptus which is mentioned in detail in most of the hadith commentaries. However, most of the holy companions and pious preceding greats used to consider it avoidable<sup>197</sup>. It is attributed to the Hanafis that they consider it permissible without any undesirability. However, Ibn Humaam writes that some among Hanafi scholars also favour its avoidability: في بعض أجوبة المشائخ الكراهية، وفي بعضها عدمها (In some replies of our jurists, it has been called avoidable while in some others it has been called permissible (without undesirability).) On the issue of `azl, elaborating on the hadith text of ذلك الوأد الخفي (That's a covert burying alive.); reputed Hanafi hadith scholar Mullaa `Ali Qaari writes: بل يدل على كراهة العزل، بل يدل على الكراهة (This text indicates the avoidability of coitus interruptus, nay, it does indicate availability<sup>198</sup>). It's true that the tone and tenor of hadiths also support this ruling.

It is evident that condoms are similar to coitus interruptus in the ruling. Lop (لوپ, some form of obstruction to the uterus) is also similar to it in ruling. Owing to this, just as the jurists have called the wife's willingness necessary for permissibility of coitus interruptus by the husband, they have also called the husband's willingness necessary for shutting the uterine cervix (uterus-mouth) of the wife in any way: يجوز للمرأة أن تسد فم الرحم منها من

<sup>194</sup> Mabsoot 26/87.

<sup>195</sup> Fathul `Ali Al Maaliki 1/399.

<sup>196</sup> Called `azl in Arabic. It is a method of birth control in which coitus is initiated but the penis is deliberately withdrawn before ejaculation

<sup>197</sup> Al Muhallaa 11/391-392.

<sup>198</sup> Mirqaatul Mafaateeh 3/441.

وصول ماء الرجل إليه لأجل منع الحمل. واشترط صاحب البحر لذلك إذن الزوج. (It is permissible for the woman to shut her uterine cervix to obstruct the husband's seminal fluid from reaching it for the purpose of contraception. The author of Al Bahr has specified the husband's permission as necessary for this.<sup>199</sup>). And on careful consideration, it will be clear that the same ruling also applies to the application of contraceptive ointments on the genitalia. In coitus interruptus and use of lop (uterine obstruction), the spermatic fluid does not enter the woman's uterus while in these kinds of ointments, the reproductive sperms of the man's seminal fluid die out and thus do not reach the woman's uterus. Therefore, since coitus interruptus is avoidable, **using these contraceptive means without necessity is also avoidable.**

Some permitted excuses in this regard deserve special mention. Threat to the life of the mother, possibility of her mental illness, physical debility (weakness) or some severe disease, inability of the mother to bring up the baby accompanied by a lack of alternative arrangement, possibility of the child suffering from severe diseases, intention of keeping a suitable gap between two babies, and other similar excuses may make the use of such temporary contraceptives permissible. The jurists have permitted coitus interruptus in a less significant excuse like doing it for fear of probable disobedience and wickedness from the would-be children. Fataawaa `Aalamgiri says: رجل عزل عن امرأته بغير إذنها يخاف من الولد السوء في هذا الزمان، فظاهر جواب الكتاب أن لا يسعه لسوء الزمان (If a person does coitus interruptus with his wife without her permission fearing wickedness from the to-be-born baby, then the apparent answer of the book to the problem is impermissibility, but it is also mentioned that it would be permissible due to the spread of evil in the contemporary age<sup>200</sup>.)

Applying these contraceptives for having a small family is not correct as it is contrary to the hadith تزوجوا (Marry a woman who loves much and procreates much<sup>201</sup>). Checking procreativity for social considerations is also not allowable. It is against the fundamentals of Islaam and the maternal responsibilities of the weaker sex. Some have called the use of temporary contraceptives for the preservation of beauty and charm, but giving higher priority to the spirit of prettification over the natural responsibility of the woman also does not appear correct. Therefore, these excuses are unacceptable in the shari'a. However, if a woman is compelled to earn due for fulfilling her livelihood needs due to her special circumstances, then temporary contraceptives may be permitted. Likewise, the campaign for population control for economic reasons that is taking place nowadays is, no doubt, an echo of the ancient Ignorance (jahiliya). The Qur'aanic verse وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةً إِمْلَاقٍ (Do not kill your children for fear of poverty. – 17:31) makes it impermissible, as the holy verse not only forbids killing of children, it also condemns the concept of "fear of poverty".

## **52. Natural method of birth control**

The method of temporary birth control in which no special act is done, the couple only avoid copulation in those days of the menstrual cycle in which, according to medical research, there is a high probability of conception, is, in its essence, permissible. However, if somebody has an intention which the temperament of the shari'a does not accept<sup>202</sup>, then this method would be avoidable.

## **53. Assistance in birth control**

It would not be allowable for a Muslim doctor to render any assistance in the cases of birth control which are impermissible. The forbiddance of assistance in sin is universally accepted near the jurists. Khulaasatul Fataawaa says: ولو أجر نفسه من ذمي ليعصر له فيتخذ خمرًا، يكره (If a person undertakes employment under a non-Muslim citizen of Islaamic state to squeeze wine for him, it will be avoidable<sup>203</sup>). Differentiating between assisting a Muslim and a Misbeliever does not appear correct in this matter. Assisting a Misbeliever in a sinful act is also not correct, though the act might be permissible in Misbeliever's religion. The jurists write: رجل له أب أو امرأة ذمية، ليس له أن يقوده إلى البيعة وله أن يقوده إلى منزله لأن الذهاب إلى البيعة معصية وإلى المنزل لا (If a man's father

<sup>199</sup> Raddul Muhtaar 2/412.

<sup>200</sup> 'Aalamgiri 4/112.

<sup>201</sup> Mishkaat 2/267.

<sup>202</sup> [Like the ones mentioned in the above paragraph.]

<sup>203</sup> Khulaasatul Fataawaa 4/346.

or wife is a Misbeliever living in Islaamic state, it would not be permissible for him to guide them to a church, etc. But it would be permissible for him to lead them back home. Going to church is a sin while going to home is not.<sup>204</sup>).

## 54. Divorce

The shari`a views the marriage as a pure, strong and permanent relation. Islaam wants that the two persons who have vowed to live together and spend their lives as companions should keep their vow forever. They should not break the cord of this strong relation on account of minor differences and temporary disputes.

As divorce means breaking this cord, so naturally Islaam dislikes it. A hadith says that the Satan is pleased most when a couple is separated<sup>205</sup>. Hazrat Saubaan reports that the fragrance of the Paradise is prohibited for the woman who demands divorce without a suitable reason<sup>206</sup>. The Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ has ordered marrying and forbade divorce. Allaah does not like men and women who first obtain enjoyment from a spouse and then separate from him or her<sup>207</sup>. In another report, the Prophet said that among the allowable acts, nothing is more detestable to Allaah than divorce<sup>208</sup>. Therefore, the jurists have also called divorce without serious need as impermissible. `Allaama Ibn Qudaamah Maqdisi says that talaq without need is detestable. He quotes another pious man as saying that divorce is prohibited as it harms both him and his wife, and the Prophet has said: لا ضرر ولا ضرار (Neither harm yourself nor harm others<sup>209</sup>). The renowned Hanafi scholar `Allaama Sarakhsi says: لا يباح إيقاع الطلاق إلا عند الضرورة لقوله عليه السلام: لعن الله كل ذواقٍ مطلقٍ، وقال: أيما امرأة اختلعت من زوجها من: نشوزٍ فعليها لعنة الله والملائكة والناس أجمعين. وقد روي مثله في الرجل يخلع امرأته، ولأن فيه كفران النعمة. (Divorce is not permissible except when necessary as the Prophet has said, “Allaah’s curse is upon the men who savour many spouses and divorce frequently.” He said, “Whichever woman wickedly takes khula` (wife-initiated divorce) from her husband, there is the curse of Allaah, angels and all the people.” Similar words have been reported for the man who does khula` with his wife, as it is ingratitude to Allaah’s favour.<sup>210</sup>)

The Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ has also indicated what can be the reason when divorcing is justified. He said: لا تطلق النساء إلا من ريبة (Women should not be divorced except when their character becomes suspect (with regard to chastity)<sup>211</sup>.) In general, divorce is not limited to the case of suspicious character alone. It is a reality that sometimes, divorce and separation of spouses become a necessity and compulsion. Due to some reasons, it remains no more feasible to travel together on the road of life. The relations get so worse that spending life separately becomes the lone guarantor of peace for both. Under such circumstances, the shari`a permits divorce as an undesirable necessity.

## 55. Initial courses of action

However, the Qur’aan also directs that divorce should not be implemented in the first stage itself. All such courses of action should be taken which may ameliorate the situation and remove mutual differences. If the two come to terms in this way, then the husband should not divorce. Allaah says: وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ ۚ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا (As to those women on whose part you see ill-conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly, if it is useful); but if they obey you, do not seek means (of annoyance) against them. – Qur’aan 4:34).

<sup>204</sup> The above reference 4/347.

<sup>205</sup> Muslim.

<sup>206</sup> Tirmidhi, Abu Daawood, Ibn Maaja, chapter of the hadiths reported regarding divorce-demanding women.

<sup>207</sup> إن الله لا يحب الذواقين والذواقات (Allaah does not love the men and women who wish to taste many spouses.), Majma`uz Zawaaid 4/335, chapter regarding the person who divorces frequently. [4/616, 7761]

<sup>208</sup> Abu Dawood, narrated by Ibn `Umar, chapter of detestability of divorce.

<sup>209</sup> Al Mughnee 7/236.

<sup>210</sup> Al Mabsoot 6/2. [Allaah did him a favour by making the wife’s body permissible for him through marriage, but he now rejects this favour by divorcing or through khula`.]

<sup>211</sup> Majma`uz Zawaaid 4/335, chapter dealing with the person who divorces frequently and dealing with the reason for divorce.

From this verse, we come to know that first counselling talking should be applied. If it is not sufficient, then the husband should separate his bed to demonstrate the gravity of his displeasure, that is temporarily stop having sexual contact with her. If even this avoidance does not rectify her, then keeping in view her natural weakness and tenderness, you may also use your hands against her, within proper limits. Then if she corrects herself, live with her as an amicable life companion. If she does not mend her ways despite adopting all these methods and the woman remains bent upon unacceptable disobedience and transgression, then it indicates that the duo are incapable of setting right this aberration. In such a circumstance, the Qur'aan orders: **وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا** (If you strongly fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from hers; if they both wish for peace, Allâh will cause their reconciliation. Indeed Allâh is Ever All-Knower, Well-Acquainted with all things. – 4:35).

In other words, reconciliation should be attempted at through other wise, pious and empathic persons. If the mutual differences end, then the two would continue living as husband and wife. But if the two do not reconcile even after this arbitration and attempts by the referees, the two harbour mutual hatred and the woman continues her disobedience non-compliance to an unacceptable limit, then the shari`a permits divorce.

## **56. Role of women in checking divorce**

Women can also play a significant and vital role in reducing the occurrences of divorce. They should keep the husbands well-disposed and inclined towards them through different ways. They should not allow an event to occur which may lead to mutual hatred and discord. The most important trait required for this is that the woman should have a complete understanding of the husband's temperament. In every aspect of life, she should keep on gauging what things and acts please him and what displease him. Yet, if he gets angry, the wife should know which of his favourite things may be used to please him. She should be aware what is the suitable time for expressing a particular kind of demand or need. Any woman who deciphers this secret and applies it in her marital life will forever live a life of cordiality and there will be, in shaa Allaah, no chance of divorce.

This is a basic thing. Additionally, the woman should pay special attention towards the following general directions. First when the husband returns tired from work, she should welcome him with warmth and cheerfulness. She should not instantly place a demand of hers which might cause worry to the husband. The hadith describes a virtuous wife as the one whom when the husband looks at, he is pleased. A woman can be the object of this hadith only when she follows this direction.

Second, she should adorn and beautify herself for the husband. She should use all possible ornaments and ways of prettification. The shari`a does not allow beautification and adornment for other men whereas it prefers this for the sake of husband. This keeps the husband chaste and modest. He is protected from evil gaze (gazing stranger women) and is not attracted towards other women.

Third, she should carefully note that she must be completely indifferent to the men with whom the husband does not want her to have any relation. The shari`a in any case directs the use of veil while dealing with male strangers. But in case of men whom the husband dislikes, she should not have any transaction or conversation even within the permissible bounds. In such case, the temperament of the man is, naturally very sensitive.

Fourth, while demanding her needs, she should not adopt an attitude which indicates selfishness or which gives an impression that she is his opponent. For example, demanding garments for herself, not caring whether the husband has them or not, or if the husband brings garments then comparing them. In fact, she should take the path of maximum possible frugality and contentment, and give preference to her husband's and other family-members' needs over hers. If she is able to make a place for herself in his heart, the husband will, by himself, do what pleases her.



Moreover, there should be variety in food items and dishes so that the man is no more inclined towards restaurants. She should be particularly careful that she does not complain about her husband to others. If at some time, there is a discord or unpleasantness in the relation, then also she should keep the matter to herself only.

## **57. How to issue divorce?**

Even in the ultimate case, the husband should not issue three divorces at once. The best method is to issue just one divorce using the word “talaq” (meaning divorce) in her period of cleanliness (period between two successive menses) from menstruation provided he has not copulated with her in this cleanliness period. After this single divorce and before the passage of the post-divorce waiting period (‘iddah), if the husband feels guilty over his decision or if the woman expresses remorse and promises a better companionship in life, then the husband will have the right to take the wife back. If he is still adamant over separation, then he should leave her in this state only. The marital relation will automatically end after the passage of the prescribed waiting period.

If there is regret even now and the couple feel that they should keep this relation, then they can marry anew. If there is a divorce even after this new marriage, then also he will be permitted to take her back. But if there is no amendment even after this, then as a last course of action, he may issue the third divorce. But this permission for the third divorce is in the last and final stage. Issuing three divorces in one go is a grave sin and disobedience of Allaah. Once Allaah’s Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ was informed about a man who had issued three divorces in one go. The Prophet stood up in extreme anger and said, “Allaah’s Book is made fun of while I am still present among you.” He was so enraged that one of the holy companions stood up and asked, “Shouldn’t I kill him?”<sup>212</sup> Hazrat `Umar has even flogged such a man<sup>213</sup>.

However, if three divorces are issued in one sitting or on three different occasions in one period of cleanliness of the woman, the three divorces do get executed. When Hazrat Hafs bin Mugheera issued three divorces to his wife, Faatima bint Qais, in a single sentence in the days of the Prophet, the Prophet separated his wife from him<sup>214</sup>. Hazrat Hasan bin `Ali issued three divorces to his wife `Aaisha in a single instance. Later when he came to know of her grief, he started weeping and said, “Had I not heard my grandfather صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ saying that if a man divorces his wife thrice, the wife will not be lawful for marriage to him till she marries another man; I would have revoked my divorce<sup>215</sup>.”

## **58. When divorce is forbidden**

It is not permissible to issue divorce in a period of cleanliness (period between two successive menses) in which the husband has copulated with his wife. Divorce should be issued in a period of cleanliness in which there has been no occasion of copulation. Commenting upon the verse of فَطَلَّوْهُنَّ لِعَدَّتِهِنَّ (Divorce the women during their ‘iddah (prescribed periods). – Qur’aan 65:1), Hazrat `Abdullaah bin Mas`ood said that divorce should be issued in a period of cleanliness in which there has been no copulation: الطلاق في طهر غير جماع<sup>216</sup>.

Moreover, the Prophet has severely censured divorcing during menses. In these days, the woman naturally becomes short-tempered and peevish and the physical (sexual) relation which is an important cause for the duo’s mutual interest and association also remains temporarily suspended during this period. Therefore, there is scope for considering the divorce to be caused by such a momentary discord. There is a good possibility that once the period of menses is over, their relations may return to normalcy. According to a hadith, `Abdullaah bin `Umar رضي الله عنهما divorced his wife during her menses. His father, Hazrat `Umar, informed the Prophet who was displeased. The Prophet asked him to order his son to reverse the divorce, and when she is clean of menses, then he may issue divorce. Another hadith says that the Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ reprimanded

<sup>212</sup> Nasai, narrated by Mahmood bin Labeed, chapter of three divorces at once and the abhorrence of this act.

<sup>213</sup> Baihaqi.

<sup>214</sup> Daara Qutni.

<sup>215</sup> Baihaqi.

<sup>216</sup> Majma`uz Zawaa'id 4/336, chapter of divorce of Islaamic tradition, quoting Tabaraani.



`Abdullaah bin `Umar and taught him the method of divorce in these words: “Ibn `Umar! You have adopted the wrong method. The correct method of divorce is to wait for her period of cleanliness, and then issue divorces in successive periods of cleanliness, one by one (two divorces should be given thus). When she enters her third period of cleanliness, you should either divorce her (forever) or keep her.”<sup>217</sup>

Thus, divorce can be classified into three categories according to effects and results: reversible divorce, estranging divorce and absolute divorce.

### **59. Reversible divorce (talaq e raj'ee)**

Reversible divorce or talaq e raja'ee is the one in which the marital relation ends when the post-divorce waiting period (iddah) is over. During the waiting period, the husband may take his divorced wife back without a new marriage contract. For this, even the wife's consent is not required. A one-sided move by the husband is enough<sup>218</sup>. This is the case when a man issues one or two divorces to his wife using the word “talaq” (meaning divorce) or some other explicit word. After one reversible divorce, if the husband issues one or two divorces during the post-divorce waiting period, it is also executed (taking the number of divorces to two or three respectively).

### **60. Method of reversal of divorce**

The very purpose of the reversible divorce is to allow time for reconsideration after this divorce. Therefore, the husband should ponder over it again and again till the end of the post-divorce waiting period, make attempts to ensure that whatever faults are there in the wife get removed, and forgive her minor and ordinary faults. The wife should also not let any such event occur which might intensify the discord and widen the breach between them. She should rather adorn and prettify herself and try to attract her husband with her graceful manners. She should resolve not to repeat her earlier mistakes.

Now if the husband wants to reverse the divorce during the iddah, then the best method for this is to declare in front of two witnesses that I had divorced my wife but I now regret it and take her back as wife. This is the best method for reversal.

Even if he pronounces such a statement while alone, without making witnesses, or does something to the woman which can only be done to a wife like kissing her, copulating with her or touching any of her sexually arousing organs with desire (or arousal), or looks at her genitalia with desire, then also it is sufficient for reversal of divorce. The woman will remain his wife after such an act<sup>219</sup>.

### **61. Estranging divorce (talaq e baain)**

Estranging divorce or talaq e baain immediately separates the couple and the marital relations end completely with it. After this divorce, the wife cannot be taken back during post-divorce waiting period, but later, whenever they like, they may remarry with mutual consent and willingness.

This divorce is executed when an implicit word is used for divorce, or the words “I issue talaq e baain to you” are used. The reversible divorce also converts to estranging divorce after the passage of the post-divorce waiting period, and the couple become completely separated with immediate effect as soon as the waiting period ends. As the marriage becomes null and void with the execution of an estranging divorce and the woman no more remains the man's wife; if after one estranging divorce, the man issues a second estranging divorce (immediately), or issues one more estranging divorce during the post-divorce waiting period, this latter divorce will not be effected. For instance, if the man says, “I have issued talaq e baain to you, I have issued talaq e baain to you”, then only the first of the two estranging divorce will be effected. But if he issues more than one

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<sup>217</sup> Bukhaari and Muslim, narrated by Ibn `Umar, chapter of the prohibition of divorce to a woman in her menses.

<sup>218</sup> Badaai`us Sanaai` 3/93-94.

<sup>219</sup> Hidaaya 2/374-375, chapter of reversal of divorce.

estranging divorce in a single sentence, like he says “I have issued two talaq e baain to you”, then both (or all) the divorces will be effected. During the post-divorce waiting period of a estranging divorce, if the man issues a divorce again using explicit words (called reversible divorce), then this divorce will get effected.

## **62. Divorce before first spousal meeting**

For a woman with whom the husband has not had copulation, even if the husband issues a divorce using the explicit word of “talaq”, it will be considered as estranging divorce. After this, it will not be permissible for him to take the wife back without a new marriage contract. In this case also, if the husband issues two or three divorces using separate sentences, only one divorce will be effected, the second and/or the third will not be effected. For example, if the husband says, “I issue talaq to you, I issue talaq to you”, then only one divorce will be executed. However, if he issues two (or three) divorces in a single sentence, then both (or all) will be effected, like when he says “I issue two talaq to you”.

The benefit of the third divorce not being executed is that if the duo wish to marry again, they would not require halaala<sup>220</sup>. The advantage from the second divorce not being implemented is that if the duo remarry in future with mutual consent, then there will be scope of two more divorces for the husband; and after two divorces upon remarriage, absolute divorce will be effected.

## **63. Correct solitude (khalwat e saheeha)**

If a man does not copulate with a wife but the couple get together in solitude that there is no physical or legal (Islaamic) hindrance to the sexual act, then this coming together is considered equivalent to copulation. The wife will be subject to the rulings of those women with whom copulation is not possible. Such terminology is called correct solitude (khalwat e saheeha) in the jargon of Islaamic jurisprudence.

## **64. Absolute divorce (talaq e mughallaza)**

Absolute divorce refers to that divorce which makes a remarriage with the wife impermissible unless the wife marries another man. The second husband should divorce her or die after copulating with her, and the woman should also complete the waiting period after divorce or spousal death. Now the woman will be lawful for marriage to the first husband and once again, she can live with her first husband as man and wife after remarriage.

After the completion of post-divorce waiting period in the case of reversible divorce, and just after the divorce in the cases of estranging and absolute divorces, the husband and wife acquire the status of total strangers. Such women should veil themselves from their former husbands and should leave their husbands home as soon as their post-divorce waiting periods are over.

## **65. Halaala (making the woman lawful for marriage to her former husband)**

It has been mentioned above that after absolute divorce, a woman would be lawful for marriage to her former husband when:

1. The waiting period of the current absolute divorce gets over.
2. Has a valid marriage with another man.
3. The new husband should have sexual relation with her after marriage.
4. The new husband then divorces her on his own, or passes away.
5. The woman should then complete the waiting period of this divorce or death.

This is also called halaala. (Qur’aan 2:230)<sup>221</sup>

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<sup>220</sup> Halaala: A thrice-divorced (or absolutely divorced) woman being lawful in marriage for the first husband after she is married to another man, has copulation and is then divorced by him.

In our days, a wrong custom has gained ground. Many people marry or organize a marriage with the only intention that the husband would divorce the wife without copulation or after copulation to make the woman lawful for marriage to her former husband. Now, if the new husband divorces without copulation, she won't be lawful for her first husband, as copulation with the second husband is a necessary condition which is explicitly mentioned in hadith<sup>222</sup>. If the new husband divorces after copulation, she will be lawful for marriage to her first husband, but the new husband who had married with the intention of halaala and the person(s) who had organized this marriage would be all gravely sinful. The Prophet صلى الله عليه وسلم invoked Allaah's curse upon such people<sup>223</sup>. However, if someone marries without the intention of halaala and then divorces her because of some reasons, then there is no sin.

## 66. Wife-initiated separation (khul')

Just as the man has the right to divorce, the woman has been given allowed wife-initiated separation (khul'). When a woman gives some money to the husband or gives up what her husband owed to her and, in return, obtains divorce from the husband, and the word used for declaring this divorce is "khul'", then it is called khul'. One estranging divorce is implemented due to wife-initiated divorce (khul')<sup>224</sup>.

Wife-initiated divorce is an undesirable thing in the shari'a. The entire institution of family goes into a mess due to separation between spouses. The offspring cannot be raised in a way they ought to be. More often than not, they have to be deprived of either the paternal kindness or maternal love. Therefore, to the extent possible, couples should avoid separation. They should bear in mind that Allaah may have decreed some good in this apparent evil (that their marital life has become).

According to a hadith, a woman who demands khul' unreasonably suffers the curse of Allaah, angels and all humans<sup>225</sup>. Another hadith says the fragrance of Paradise will be forbidden for a woman who demands divorce from her husband without a suitable and exceptional reason<sup>226</sup>. The Prophet called the woman who unnecessarily demands khul' as a hypocrite<sup>227</sup>. Therefore, demanding divorce from the husband on account of minor complaints, petty squabbles, or merely for renewal of pleasure (by having sex with a new person) and getting a new (sexual) taste is a grave sin. Similarly, demanding khul' on matters which are permitted in the Islaamic law is extremely improper and detestable. In our society, for example, women start demanding divorce if the husband marries a second wife, whereas the second marriage is permissible and lawful if it does not lead to injustice and partiality. So demanding divorce because of this is incorrect.

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ.

If the husband divorces her (the third time), then she is not lawful to him thereafter until she has married another husband. Then, if the other husband divorces her, it is no sin on both of them that they reunite, provided they feel that they can keep the limits ordained by Allāh. These are the limits of Allāh, which He makes plain for the people who have knowledge. (Qur'aan 2:230)

<sup>222</sup> The story of Hazrat Rifa'a and his wife is explicitly mentioned hadiths. (Narrated by Bukhaari, quoting `Aaisha, chapter of those who have allowed three divorces, page 791)

[Narrated Aisha: The wife of Rifa'a Al-Qurazi came to the Prophet and said, "I was Rifa'a's wife, but he divorced me and it was an absolute (final irrevocable) divorce. Then I married AbdurRahman bin Az-Zubair but he is impotent." The Prophet asked her "Do you want to remarry Rifa'a? You cannot unless you've had a complete sexual relation with your present husband." Abu Bakr was sitting with Allah's Apostle and Khalid bin Said bin Al-'As was at the door waiting to be admitted. He said, "O Abu Bakr! Do you hear what this (woman) is revealing frankly before the Prophet?" (Bukhaari 3-48-807, 2/933, 2496)]

<sup>223</sup> Ibn Maaja.

<sup>224</sup> Fathul Qadeer 3/199.

<sup>225</sup> Abu Daawood.

<sup>226</sup> Abu Dawood, chapter of wife-initiated divorce.

<sup>227</sup> Nasai, chapter of the hadiths related to wife-initiated divorce. [Hypocrite is the translation for munaafiq which means a non-Muslim at heart who falsely claims to be a Muslim.]

However, on account of some proper reasons, if there is a strong probability that the couple will not be able to live together, an environment of extreme hatred and discord has developed and their relations have come to a stage that there is a strong likelihood of their inability to fulfil their duties towards each other; then the Islaamic shari`a permits separation. When the discord reaches this level, it is a duty of the husband that he should divorce the wife if she demands, and select a new life-partner for himself.

Several such cases occurred in the days of the holy Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ in which the wife desired wife-initiated divorce on account of the husband's too much beating or his ugliness. The Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ got back the money and gifts given to the wife as mahr and ordered the husband to divorce her<sup>228</sup>. In our Indian society, normally the women make such demands only when they get into deep water and their mutual discord and tension become exceedingly unbearable.

Two conditions are necessary for wife-initiated divorce. First, the husband should be willing to divorce and second, the wife should give some compensation. If the husband is not willing to divorce, then the woman can not carry out on-sided wife-initiated divorce like the husband who has the right to divorce unilaterally. However, the woman has the option of getting her marriage nullified by the Islaamic judge after proving before the judge, the husband's tyranny and/or a reasonable basis for separation.

The compensation that the woman pays for wife-initiated divorce has the status of a mutual agreement, so whatever amount they decide mutually will be the compensation. Nevertheless, the shari`a has set some proper limits, the details of which are mentioned here. If the transgressor is the husband himself, then he should not accept any compensation for the divorce and do it gratis. The shari`a has given only two options to the husband: retaining the wife on reasonable terms or releasing her in a good manner. Now as the husband is unable to follow the first option, he should choose the second option. On the other hand, if the transgressor is the woman, then the man should accept compensation up to the extent of what he had paid her as mahr. In no case should he take a compensation that exceeds the mahr. If he has not paid the mahr yet, then he should divorce her on the condition of her forgoing the mahr<sup>229</sup>.

## **67. Waiting period ('idda)**

The shari`a has specified a prescribed waiting period for the woman after divorce from the husband and after the husband's death during which she cannot marry any other man. This period is called "waiting period" or `idda. The purpose of the waiting period is expression of grief and sorrow upon separation from her husband and/or mourning her husband's death. Another purpose is to ascertain that there is no seminal fluid in the woman's uterus from her former husband. So if she now remarries, there is no fear of mix up of lineage of the to-be-born and of confusion in determining the father of this baby.

Waiting periods are of two kinds: waiting period for divorce and waiting period for husband's death.

## **68. Waiting period for divorce**

This waiting period differs for different kinds of women.

- If the woman is pregnant, then the waiting period continues till childbirth. The waiting period is over with the delivery of her baby (Qur'aan 65:4<sup>230</sup>).
- If the woman is not pregnant and her menstrual cycles are going on, then she will spend three periods of menses as waiting period after the period of cleanliness in which she was divorced. If, contrary to the

<sup>228</sup> Abu Dawood chapter of khul` page 303.

<sup>229</sup> Durr e Mukhtaar 2/558.

<sup>230</sup> [

وَاللَّائِي يَئْسَنَ مِنَ الْمَجِيزِ مَنْ يَسَائِكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَاللَّائِي لَمْ يَحْضُنْ وَأُولَئِكَ الْأَحْمَالُ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ.

Such of your women as have passed the age of monthly courses, for them the waiting period, if you have any doubt, is three months, and for those who have no courses (it is the same). For those who carry (life within their wombs), their period is until they deliver their burdens. (Qur'aan 65:4) ]

preferred method of Islaamic tradition, she has been divorced in a period of menses, then she will have to spend three periods of menses other than that (Qur'aan 2:228<sup>231</sup>).

- If the woman is not pregnant and because of her immature age, her menses have not started, or her menstrual cycle has stopped because of old age, then her waiting period is three months (Qur'aan 65:4). If the divorce was carried out on the first day of a lunar month, then three months' waiting period will be spent according to the lunar calendar. If the divorce has been carried out at any other time of the lunar month, then the waiting period will be 90 days.<sup>232</sup>
- The divorced woman who has not got together with her husband in solitude does not need to spend any waiting period for the divorce.<sup>233</sup>

During the waiting period of the reversible divorce, the woman should take extra care to keep herself adorned, ornamented and beautified so that the husband feels inclined and disposed towards her. Moreover, since the woman continues to be the wife of the divorcer during the waiting period of a reversible divorce, it will not be permissible for any other man to make a marriage proposal to her explicitly or implicitly.<sup>234</sup>

After estranging or absolute divorce, the woman instantly moves out of the marriage and no more remains the wife, so to express her grief over this separation, she should completely avoid adornments and ornaments. She should not apply fragrance, wear colourful and bright garments nor use jewellery, cream, powder, scent, perfumery, etc. She should spend her waiting period in the same house where the divorce has occurred and not move to any other home. No proposal for marriage should be made to her.<sup>235</sup>

## **69. Waiting period for husband's death**

Before Islaam, several dreadful, inhuman and pain-inflicting methods of spending the waiting period prevailed. Such women were confined in a dark, dingy and stinking room for a whole year and animal excreta would be thrown upon them. Moreover, these unfortunate, calamity-struck women were considered damned and inauspicious. All the bounties of this world were prohibited to them all their life. In the Hindu religion, the woman would consider burning herself in the funeral pyre of her husband a religious duty. When Islaam came, it rectified the uncivilized, inhuman and brutal custom. On one side, Islaam put an end to the tyrannies inflicted upon this downtrodden community of the human being, and on the other side it gave due regard and consideration to the husband's favours and his high status. It laid down a permissible way for the wife to express her natural grief and sorrow, and safeguarded the parental lineage from mix-up.

The waiting period meant for mourning that becomes compulsory following the husband's death is applicable both to mature and immature women, no matter she had had the opportunity to get together with her husband in solitude or not.<sup>236</sup> During this waiting period also, adornment, beautification, use of jewellery, scent, partitioning the head-hair with a comb, applying oil to the head or kohl to the eyes without necessity and without disease, chewing betel-leaf, etc. are forbidden.<sup>237</sup>

The duration of this waiting period varies for non-pregnant women is four months and ten days (Qur'aan 2:234<sup>238</sup>). The waiting period of a pregnant woman is over when she delivers the baby. Till the completion of

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<sup>231</sup> [وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ] (And the divorced women shall keep themselves waiting for three periods (of menses)). (Qur'aan 2:228)]

<sup>232</sup> Al Kawaakibul Mushriqah page 37; Fataawaa `Aalamgiri 2/135.

<sup>233</sup> Al Fataawaa Al Hindiyah 2/134.

<sup>234</sup> Al Fataawaa Al Hindiyah 2/137, chapter 14.

<sup>235</sup> Al Fataawaa Al Hindiyah 2/137-138, chapter 14.

<sup>236</sup> Khulaasatul Fataawaa 2/117.

<sup>237</sup> Qudoori, page 188, unit of waiting period.

<sup>238</sup> [وَالَّذِينَ يَتُوفُونَ مِنْكُمْ وَیَذَرُونَ أَرْوَاجًا یَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا] (The wives of those among you who pass away and leave wives behind, shall keep themselves waiting for four months and ten days.. – Qur'aan 2:234)]



this period, she can neither remarry nor leave her present house to visit some other place<sup>239</sup>. The permission to mourn for four months and ten days is applicable only to the husband's death. Upon the death of any other relation, a mourning of more than three days is not permitted.

It is permissible to apply oil to the head on account of headache and kohl to the eyes on account of eye-pain. However, if applying kohl at night is sufficient, she should not apply it in the day; and if white kohl is sufficient, then black kohl should not be used.

Marriage proposal by dropping a hint may be sent during the waiting-period of the husband's death. The method for implicit proposal is that the man may say to her that he plans to marry, or that he plans to marry a woman who has such and such attributes, and then list out the attributes present in that woman. The woman should spend her waiting period in the house where she used to live at the time of the husband's death. However, if there is some reasonable excuse, she may shift to another house. Examples of reasonable excuses are expulsion of the woman from the house by the husband's inheritors; or – in the case of the house being rented and the landlord demanding the rent – her financial state not allowing her to pay the landlord<sup>240</sup>.

If the woman needs to step out of the house due to absence of a person who could buy provisions for her, she may go out but must not stay outside for more than necessary duration. She must return home and spend the night there in such a way that the major portion of the night is spent at her house<sup>241</sup>.

If the woman has gone to her parental place at the time of her husband's death, then she should return to her husband's house without delay and spend her waiting period in this house which her husband had provided her. The waiting period has to be spent in the house which she had got from her husband to live. If the separation has occurred due to divorce, wife-initiated divorce or some other reason, then it is not permissible for an immature woman to step out of her house. An immature girl can step out of the house with her husband's permission in the case of reversible divorce, and in the case of estranging divorce, without her husband's permission.

Total veiling is incumbent in case of an estranging divorce or an absolute divorce, and the man and woman should never appear before each other. It is not enough for the woman to hide her body only from her husband, as little conscientious barrier remains between the two due to their previous relations. The chance of them committing the evil is strong here. Of course, there is no need for veiling from the husband in case of a reversible divorce. The husband cannot take her divorced wife with him on a journey, even if she remains in her waiting period.

## **70. [Waiting period for unlawful copulatress](#)**

As the purpose of the waiting period is to express respect and show consideration towards the previous marital relation and unlawful copulation is a case of extremely evil and immoral relation, there is no waiting period for unlawful copulation. The woman can marry even if she gets pregnant. Now if she married the same unlawful copulator, then he can copulate with the wife without any interim waiting period. But if another man has married the unlawful copulatress, then the marriage will be valid but marital sex will not be permissible till she delivers the baby (Hidaayah 2/312).<sup>242</sup>

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<sup>239</sup> Al Meezaan Al Kubraa 2/153.

<sup>240</sup> Al Fataawaa Al Hindiyah 2/138.

<sup>241</sup> Al Fataawaa Al Hindiyah 2/138.

<sup>242</sup> The rulings of "Divorce" is a summary of a part of the author's (Maulaanaa Khalid Saifullah's) book "Talaq o tafreeq" (Divorce and separation).

؁ stands for Arabic ain ع

‘ or ’ stands for Arabic hamza ء

**Farz** obligatory, mandatory

Waajib compulsory

Sunnat Prophet’s tradition, custom

Sunnat e muakkada emphasized custom

Nafil

Mustahab desirable

Afzal preferable, highly rewarding, more rewarding

Adab, Aadaab etiquette

Jaaz, mubaah, halaal permissible, allowable

Man`, nahy forbidden

Makrooh tanzeehi undesirable

Makrooh avoidable, avoidability, detestable

Makrooh tahreemi strictly avoidable

Haraam prohibited

Ahle Kitaab Scripture People

Ahle Sunna

`Aqeeda doctrines

Baihaqi

Badarja e aulaa preferentially

Dahriya Atheist

Fuqahaa jurists

Had, hudood Allaah-decreed punishment

Hadith tradition

Halaala a thrice-divorced woman being lawful in marriage for the first husband after she is married to another man, has copulation and is then divorced by him.

Hanafi

Hanbali

Helper

`iddah post-divorce waiting period

Iztiraar indispensability, dire necessity

Kaafir Misbeliever

Khula’ wife-initiated divorce

Kinaaee implicit

Kitaab, baab, fasl unit, chapter, topic

Kufr Misbelief

Laa Mazhab agnostic

Maaliki

Mo’min Believer

Munaafiq Hypocrite

Mut’ah

Nabi, Rasoolullaah Prophet صَلَّى الله عليه و سلم

Najaasat filth

Nasab filiation, parentage

Nazeer, nazaair similitude

Religious impropriety: deeni mafsada

Riwaaya report, narration

Sahaaba	holy companions
Sahaabi	
Salaf	preceding great
Sareeh	explicit
Shaafi'ee	
Shahwat	desire, arousal
Sura	
Ta`zeer	punishment for the crimes for which the quantum of sentence has not been fixed by Allaah
`uzr	necessity
veillessness	
Zaroorat	necessity
Zinaa	unlawful copulation, unlawful copulator, copulatress
Zindeeq	hypocrite apostate

## Revision

- Halaal o haraam's footnotes from topic 6
- The texts within brackets [ ] are from shamsul islaM.
- Make topics 47-53 as sub-topics of 46. Family planning.
- Make topics 55-70 as sub-topics of 54. Divorce
- How did the narrator companion know that the Prophet kissed `Aaisha r.a.?

pmd = Prophet Muhammad صَلَّى الله عليه و سلم

thp = the holy Prophet صَلَّى الله عليه و سلم

pbuh = صَلَّى الله عليه و سلم

puh = (عليه السلام)

phm = (May Allah's Pleasure be upon him) (رضي الله عنه)

phr = (May Allah's Pleasure be upon her) (رضي الله عنها)

ptm = (May Allah's Pleasure be upon both of them) (رضي الله عنهما)

ptm = (May Allah's Pleasure be upon them) (رضي الله عنهم)

mhm = (May Allah's Mercy be upon him) (رحمة الله عليه)

mhr = (May Allah's Mercy be upon her) (رحمة الله عليها)

mb = (May Allah's Mercy be upon both of them) (رحمة الله عليهما)

mtm = (May Allah's Mercy be upon them) (رحمة الله عليهم)

[Translation of *Halaal o Haraam* by Maulana Khaalid Saifullaah Rahmaani, pp. 244-333]

Also referred:

*Dars e Tirmizi* by Maulana Md Taqi Usmani, vol. 3, pp. 343-525. *Tanzeemul Ashtaaf* by Maulana Md Abul Hasan, vol. 2, pp. 164-218. *Faizul Baari* by Shaikh Md Anwar Shah Kashmiri, vol.4, pp. 274-333. *Hidaya* by Abul Hasan Ali bin Abu Bakr Al Farghaani Al Margheenani, vol. 2, 305-449.

*Al Mukhtasar Al Qudoori* by Abul Hasan bin Ahmad bin Muhammad bin Ja'far Al Baghdadi Al Qudoori, pp. 157-194

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